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Chairman:	Mr. AFONSO	(Mozambique)
later:	Mr. TETU (Vice-Chairman)	(Canada)
later:	Mr. AFONSO (Chairman)	(Mozambique)

CONTENTS

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (continued)

AGENDA ITEM 126: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued)

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (continued) (A/46/10, A/46/405)

1. Mr. LACLETA (Spain) said that while the International Law Commission had made slow progress in its consideration of international liability for injurious consequences arising out of acts not prohibited by international law, the topic was especially difficult in that it involved not merely codification but the progressive development of law. Liability in the absence of a wrongful act - or "responsabilidad objectiva" - was not an accepted concept in international law. However, the draft articles were based on the idea, that his delegation fully shared, that the innocent victim should not be left to bear the loss alone even if the party that had caused the damage was not guilty in the legal sense of the word.

2. There was a clear tendency in the Commission's work to stress the need to prevent and avoid damage, primarily, through the regulation of activities including risk; importance was also being attached to the preservation and protection of the environment; his delegation was not opposed to those trends, provided that they did not obscure the original meaning of the topic. Even if it were possible to determine precisely which activities involved risk with a view to regulating them it would not be possible to include all possible cases of transboundary harm that did not entail culpability. Any activity was potentially dangerous; where there was life there was risk.

3. It would clearly be difficult to secure wide acceptance of norms or a code of conduct in such a broad field; it was for that reason that the question had been raised of establishing an intergovernmental fund (A/46/10, para. 249) in order to ensure compensation to victims. His delegation did not feel it would be useful to draw up a list of dangerous substances. Nor did it feel it would be useful at the current stage to determine the legal nature of the instrument to be drafted; for the time being the Commission should concentrate on drafting a set of coherent, rational and politically acceptable articles; while his delegation would welcome a convention it was too soon to make that the final objective. His delegation fully supported the idea that the principle of liability should be based not on risk, but on the concept of harm (A/46/10, para. 241).

4. His delegation did not feel that the topic "Relations between States and international organizations" was a priority for the Commission. Nevertheless, it would be useful to have a codifying instrument setting forth the generally accepted norms in respect of relations between States and international organizations and especially the privileges and immunities of such organizations and their staff.

5. His delegation did not support the inclusion of new items in the Commission's programme of work; the Commission should concentrate on the three

(Mr. Lacleta, Spain)

major pending topics, and above all on the topic "State responsibility". The list of possible topics for future consideration was not very satisfactory, except perhaps for "The law of confined international groundwaters" and "legal aspects of the protection of the environment of areas not subject to a national jurisdiction", which were linked respectively with the law of the non-navigational uses of international watercourses and international liability for injurious consequences arising out of acts not prohibited by international law.

6. Mr. O'REILLY (Ireland) said his delegation hoped that the Commission would give priority to the topic "international liability for injurious consequences arising out of acts not prohibited by international law". It recognized the Commission's frankness in acknowledging lack of satisfactory progress. The two guiding principles of the Commission's work on the topic, the precept sic utere tuo ut alienum non laedas and the principle that the innocent victim should not be left to bear the loss alone, established limits to the topic which his delegation felt were appropriate. First, only lawful activities were covered; activities prohibited by international law were excluded since they were covered under State responsibility, as were the consequences of such activities. Second, there were two kinds of lawful activities which might come within the scope of the topic, those involving the risk of causing harm in a neighbouring State and those actually causing harm in a neighbouring State. His delegation felt that the Commission had strayed from that area. For example, there had been excessive concentration on environmental and ecological matters, including the questions of dangerous substances and of environmental accidents and ecological disasters, which did not fit appropriately into the topic. The question of "global commons" was also outside the scope of the topic.

7. The Commission needed to take decisions on some important issues before it could make progress on the topic. Controversial matters could not be set aside with a view to having them resolved when simpler issues had been settled, because those controversial matters concerned the fundamentals of the topic. His delegation was puzzled by the failure to adopt definitions on such key concepts as acts or activities involving risk, acts or activities with harmful effects and transboundary harm.

8. The continued ambivalence as to what kind of instrument the Commission should be working on was also impeding progress. His delegation felt that the objective should be a convention; that was a realistic goal provided that the Commission remained within the limits of the topic as originally perceived. The draft articles should set out basic rules and could constitute an umbrella convention under which multilateral agreements dealing with specific kinds of activities and bilateral agreements covering specific situations could emerge. The starting-point of the instrument should be the provisions set forth in article 6 enunciating the principle sic utere tuo ut alienum non laedas and reflecting Stockholm Principle 21. Having defined the two kinds of relevant activities, those involving risk and those actually causing harm, it would deal mainly with the corresponding remedies of prevention and reparation.

(Mr. O'Reilly, Ireland)

9. His delegation believed that the draft articles should be concerned exclusively with liability between States. The suggestion that liability might in some cases be imposed on the operator rather than on the State was another digression from the basic theme of the topic. Liability should rest clearly on the State of origin, leaving it to domestic law to determine whether the operator should be obliged to indemnify the State.

10. Mr. Tetu (Canada) (Vice-Chairman), took the Chair.

11. Mr. HAMAI (Algeria) said that the draft articles on jurisdictional immunities of States and their property represented a balanced and realistic synthesis of the concepts of absolute immunity and relative immunity. That synthesis was in keeping with the multiple interests of each State which, depending on the situation, could be either the forum State or the foreign State. It would also facilitate the broadest possible acceptance of the draft articles and once again illustrated the Commission's consensus approach which enabled it to pursue effectively its goal of promoting the progressive development and codification of truly universal international law.

12. The new title of part III of the draft articles could prove to be an acceptable compromise for the proponents of the two variations suggested in the previous year. Article 2, paragraph 2, in determining whether a contract or transaction was a "commercial transaction", took into consideration the nature of the contract and its purpose, thus making it possible to ensure that the objective of the transaction was indeed commercial in nature. Otherwise, the jurisdictional immunity of the State would continue to have full effect. Article 18 established clearly the principle of State immunity from measures of constraint, along with several exceptions including that concerning express consent of the State. Article 22 assured the State of immunity from measures of coercion and procedural immunities, in particular establishing that a State should not be required to provide any security or deposit. All those measures were judicious and appropriate and were in full conformity with the well-established principle of international law par in parem imperium non habet, a principle which solemnly reaffirmed Article 2 of the Charter of the United Nations proclaiming the sovereign equality of all its Members.

13. The draft articles on the law of the non-navigational uses of international watercourses were based on two main ideas: equitable and reasonable utilization and participation (art. 5) which would preserve watercourses for future generations and ensure the protection of ecosystems, and the obligation not to cause appreciable harm (art. 7). The draft articles consisted of a number of rules designed to implement those two principal ideas; the main objective was to establish mechanisms for cooperation and coordination between watercourse States, thus contributing in the long run to the strengthening of good-neighbourly relations between States. His delegation welcomed the inclusion of groundwater in the sphere of application of the draft articles; the depletion of fresh water and the pressure of demographic growth, and the vital need to preserve the Earth's water resources, made it essential for the draft articles to cover that question in all its aspects.

(Mr. Hamai, Algeria)

14. With regard to the draft Code of Crimes against the Peace and Security of Mankind, the question arose of the sphere of application of the draft Code both in respect of competence ratione materiae and competence ratione personae. With regard to the former, his delegation had always felt that the Code should not include acts which, even though particularly serious, were not really crimes against the peace and security of mankind. The Code should be concerned only with acts of exceptional seriousness with substantial detrimental consequences for peace and security. The purposes and principles of the Charter should be the main criteria in identifying such crimes. His delegation could support the inclusion of the crimes specified in articles 15-20, 22 and 23, but felt that the use of nuclear weapons, whose capacity for mass destruction represented the greatest danger to the survival of mankind, should be included as an act constituting a war crime. At the same time, his delegation had reservations about the inclusion in the draft Code of acts such as illicit traffic in narcotic drugs or wilful and severe damage to the environment which were not necessarily crimes against the peace and security of mankind.

15. In respect of competence ratione personae, he noted that for the time being the Commission had limited the draft Code to the criminal responsibility of individuals but did not exclude application of the concept of international criminal responsibility to States at a later stage.

16. By virtue of the principle nulla poena sine lege, the Code must make provision for applicable penalties. His delegation supported the establishment of an international criminal court because without such a court the Code would be without effect. However, because of the hostility and hesitation of some delegations, the idea should be considered in more detail.

17. Little progress had been made on the topic "international liability for injurious consequences arising out of acts not prohibited by international law". His delegation agreed that priority should be accorded to the topic and that it was not desirable to reopen a general debate on its fundamental premises. The main objection raised to the draft articles was the absence in positive law of precise or general rules concerning liability stricto sensu and in particular reparation for transboundary harm caused by activities involving risk of such harm. His delegation noted that the topic was not really new: paragraph 188 of the Commission's report (A/46/10) referred to a considerable number of legal instruments on the question. In any case, even if the topic were new it should not be dropped from the Commission's programme of work because the Commission was supposed to be concerned with the progressive development of international law. The ever-growing interdependence of the members of the international community, particularly in areas as sensitive as the environment, required a realistic but also an innovative approach. However, the topic must not be reduced to the question of the deterioration of the environment, which was under consideration in other bodies; the Commission must concentrate on international liability for injurious consequences of activities which caused or were liable to cause

(Mr. Hamai, Algeria)

transboundary harm. Special emphasis must be laid on the situation of developing countries, which were the main victims of such damage; because of their lack of technical and financial resources, developing countries could not adequately regulate activities involving risk or causing harm.

18. The list of topics suggested for the Commission's long-term programme of work had been judiciously chosen. Nevertheless, his delegation would prefer to accord priority to completion of the topics already on the agenda.

19. Mr. KIRSCH (Canada) said that the results of the Commission's work over the past 13 years on the topic "International liability for injurious consequences arising out of acts not prohibited by international law" were disappointing. The principles underlying the topic were not new. In fact, in a statement made at the 1972 United Nations Conference on the Human Environment, following the adoption of the Stockholm Principles, his Government had affirmed that a number of those principles had reflected customary international law governing the conduct of States in dealing with environmental problems. That view had been endorsed by others, including the United States, and had been founded on the landmark Trail Smelter case, which had begun in the 1930s. Yet, some members of the Commission and of the Sixth Committee maintained that customary principles of international environmental law did not exist and that the very concept of liability for injurious consequences arising out of acts not prohibited by international law had no legal foundation. As a consequence, during the entire time that the topic had been under review, not one article had been considered by the Drafting Committee or adopted by the Commission.

20. His delegation believed that progress by the Commission on the topic was long overdue. International environmental law, including that relating to the "global commons" and the United Nations Convention on the Law of the Sea, was evolving rapidly outside the Commission, as demonstrated by the adoption in June 1990 of the amendments to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the adoption in May 1990 of the precautionary principle in the Bergen Ministerial Declaration on Sustainable Development in the ECE Region and the ongoing international negotiations on climate change. Progress was also being made on other environmental issues, such as the protection of biological diversity, forest management and legal issues relating to the 1992 United Nations Conference on Environment and Development. The work of the Commission on the topic of international liability should by rights be the centre-piece of the evolving body of international environmental law and, as such, would represent the most significant contribution of the Commission to the development of contemporary international law. Unfortunately, such was not the case.

21. With regard to the seventh report of the Special Rapporteur (A/CN.4/437 and Corr.1), his delegation wished to express its satisfaction at some aspects of the work. While in the past doubts had been expressed as to whether there could be liability under international law for acts that were not prohibited,

(Mr. Kirsch, Canada)

there currently appeared to be widespread recognition of the need for progressive development of the law and codification in that field. His delegation joined in the increasing unwillingness to continue debating the question of which of those two aspects merited the Commission's attention. Its members could surely agree that States shared a common obligation to protect and conserve the environment and in elaborating that obligation, the Commission should be guided in particular by Stockholm Principle 21 and the three cases on which it was based: the Trail Smelter case, which had established that States had the obligation to avoid transboundary harm; the Corfu Channel case, which had established that no State could knowingly allow the use of its territory to the detriment of other States; and the Lake Lanoux case, which had established that States must take the interests of other States into consideration in their environmental planning.

22. His delegation considered it unfortunate that the Trail Smelter case had been cited as a reason for lengthy debate as to whether local remedies must be exhausted before States could be found liable, or voluntarily accept such liability. Like the delegation of Sweden and others, his delegation considered that the question of the liability of the operator need not be an obstacle to determining liability at the State-to-State level. To argue otherwise was to render the concept of national sovereignty and control meaningless.

23. His delegation had repeatedly indicated its preference for separate treatment of the concepts of risk and harm. It continued to hold the view that appreciable harm must be the primary basis on which liability was determined. The concept of risk should not be involved in determining liability but should give rise to preventive measures and be used to ascertain the level of preventive care necessary. Determining liability on the basis of risk would drastically reduce the scope of the draft articles since damage, even if substantial, could be excluded if it was the result of low-risk activities. Low-risk activities might have catastrophic consequences while high-risk activities might never cause damage. In elaborating the draft articles, the Commission must bear in mind that the main objective was to provide for compensation for damage incurred and a regime of reparation, independent of the concept of risk.

24. For similar reasons, his delegation did not believe that an illustrative list of activities involving risk should be included in draft article 2. The emphasis placed on the concept of damage in draft article 1 should, to the greatest possible measure, be reflected in draft article 2, the scope of which might be narrowed considerably by the inclusion of lists of dangerous substances or activities. The inclusion of such lists, in combination with the use of the concept of risk was a criterion for determining liability, might shift the Commission's focus from elaborating a convention on international liability for injurious consequences to elaborating a convention which would simply limit liability. In the view of his delegation, that certainly should not be the Commission's objective. It felt, moreover, that the originating State should clearly bear international liability for harmful

(Mr. Kirsch, Canada)

activities caused by individuals under its jurisdiction. The Commission should not lose sight of the fact that there appeared to be consensus on the principle that the innocent victim should not be left to bear the costs.

25. His delegation was, upon preliminary consideration, favourable to the United Kingdom delegation's proposal that the title of the topic should be "International responsibility for transboundary harm". It was somewhat uneasy about the growing trend in the Commission towards replacing the word "act" in the title by the word "activity". It was the act of pollution which had given rise to liability in the Trail Smelter case even though the activities causing the pollution had occurred over a lengthy period of time.

26. His delegation felt strongly that the instrument should take the form of a draft convention which was intended to be legally binding. A code of guidelines would clearly be an inadequate response to the enormous needs of the international community; thus it would be wiser, at least in the early stages, to allow States that did not accept international responsibility for the damage they caused to the environments of other States or to the "global commons" to remain outside the convention. The principles embodied in a properly elaborated convention would almost certainly evolve into customary law, thus making it a "law-making convention" which would eventually be binding on all States.

27. The issue of any overlap between the topics of State responsibility and international liability should be debated outside the Commission so that it could proceed with the increasingly urgent practical task of developing international environmental law.

28. Despite the foregoing reservations, his delegation continued to support the major orientation of the draft articles proposed by the Special Rapporteur and agreed that the topic should be given high priority during the next quinquennium. The current state of international law, and the principle of equity, justified adoption by the international community of the principle that States were responsible for activities carried out under their jurisdiction. His Government would continue to promote that principle in all the appropriate forums, with a view to filling the gaps in conventional and customary law and in the interest of the progressive development of international law.

29. Mr. KENDALL (Marshall Islands) said that further development of international law was the most effective way to move the new world order in the direction of the peace and well-being sought by all. In the light of its mandate and the experience of its members, the International Law Commission should play a fundamental role in helping the world to attain that goal.

30. If codified, the topics contained in chapters IV and V of the Commission's report would provide significant and promising developments in international law. With regard to chapter IV, he wished to comment on matters

(Mr. Kendall, Marshall Islands)

of principle. First, the draft Code should define its relationship with existing multilateral conventions that dealt with the crimes contained in the Code. Secondly, the Code should describe those offences as precisely as possible. Thirdly, imprisonment and/or confiscation of property acquired as a result of the criminal acts would constitute appropriate punishments for those offences. Lastly, the Code should specify a minimum and maximum punishment.

31. His delegation was in favour of the establishment of an international criminal court, since that was the only means of providing the objectivity and impartiality required for the application of the Code. The European Court of Human Rights might provide an interesting model, in particular with respect to defining the relationship between national and international jurisdictions. The European Court had also developed a body of pertinent jurisprudence on the issue of the exhaustion of local remedies. Another useful source of inspiration might be the Inter-American Court of Human Rights.

32. His delegation was of the view that States, non-governmental and intergovernmental organizations, and individuals should have the right to bring cases to the attention of an international commission, which would act as a prosecutor's office and be attached to the proposed international criminal court. The commission would investigate the charges to determine whether there were grounds for prosecution; if grounds did exist, the commission would then be responsible for authorizing and undertaking the prosecution before the court.

33. His delegation did not favour making criminal proceedings contingent on prior determination by the Security Council as to whether the offence in question constituted an act or threat of aggression. Since the system lacked a mechanism for determining whether a political body was acting ultra vires, there must be a strict separation of the judicial functions of an international criminal court and the political functions of the Security Council. Furthermore, providing the Security Council with a means of blocking criminal proceedings might create a basic inequality between those accused of the crime of aggression, in violation of the principle of equality for all before the criminal law.

34. Turning to chapter V, he said that the Commission should accord priority to the topic of international liability. While it was his view that an international convention might be an appropriate instrument, he agreed with the Special Rapporteur that a final decision on the matter could be delayed until more progress had been made on the topic. In elaborating the draft articles, account should be taken of the special situations of the developing countries. The articles should deal not only with the activities causing transboundary harm but also with activities involving a risk of such harm; they should also include the principle of prevention.

35. His delegation believed that the articles should be based on the principle that the innocent victim should not be left to bear his loss alone. Compensation for loss should be obtained either by assigning liability to the

(Mr. Kendall, Marshall Islands)

State of origin or assigning civil liability to the operator, or a combination of the two. In the latter case, liability would initially be assigned to the operator, with the State bearing residual liability in the event that the operator could not be identified or compensation was inadequate. It might be appropriate to consider the creation of two distinct bodies: one to assign liability and the other to decide upon compensation. Lastly, any list of dangerous activities which might be included in the draft articles should be considered illustrative and non-exhaustive.

36. With respect to the Commission's long-term programme of work, he believed that priority should be granted to two topics: "Legal aspects of the protection of the environment" and "The legal effects of resolutions of the United Nations".

37. Mr. AL-BAHARNA (Bahrain), referring to chapter VI of the Commission's report, concerning relations between States and international organizations, said his delegation was gratified by the progress on that topic made by the Commission at its forty-third session. It wished to reiterate that the granting of immunities and privileges was based on the assumption that they were necessary to the efficient functioning of international organizations.

38. Turning to the draft articles, he observed that the main purpose of article 12 was to establish the inviolability of the archives of international organizations. That inviolability was based on the principle of the independence of international organizations, which was a prerequisite for the effective performance of their functions. His delegation therefore had no hesitation in endorsing that principle. None the less, like some members of the Commission, he advocated broadening the definition of archives to include modern means of communication such as computer files, electronic mail and satellite communications. It was his view that paragraphs 1 and 2 of article 12 would best be combined into a single paragraph and that the words "in general" in paragraph 1 should be replaced by the words "in particular".

39. His delegation accepted in principle the text of article 13 concerning the free circulation and distribution of publications and public information material, since that was essential to the functioning of international organizations. However, he felt that the list of materials should be broadened to include "high-tech" materials such as magnetic disks, diskettes and computerized products.

40. In the view of his delegation, the second sentence of article 14, requiring the consent of the host State for the installation and use by an international organization of a wireless transmitter, was quite restrictive and could be deleted. Neither the Convention on the Privileges and Immunities of the United Nations nor the Convention on the Privileges and Immunities of the Specialized Agencies contained a condition of that type.

(Mr. Al-Baharna, Bahrain)

41. Article 15 addressed only part of the problem it dealt with, omitting the question of censorship of official communications, in particular censorship that could be imposed by a host State prior to the issuance of communications.

42. He agreed with the view expressed in paragraph 293 of the report that article 17 was "too restrictive for the rights of the international organizations" and that it was "too much in favour of the interests of States".

43. His delegation endorsed article 18, which contained the general principle that the property and income belonging to an international organization and intended for official activities were exempt from direct taxation. The Commission should consider incorporating in the commentary explanations of the terms "direct taxes", "indirect taxes" and "official activities", based on State practice.

44. He would appreciate clarification as to the distinction between the expression "for public utility services" in article 18 and the expression "for specific services rendered" in article 19. Unless there was reason to do otherwise, the same expression should be employed in both articles. In any case, it was important to harmonize the two articles, since they dealt with similar subjects.

45. Article 20 appeared to be in conformity with the norms laid down in the international conventions on privileges and immunities of international organizations. However, since difficulties had arisen from time to time regarding the meaning of the term "official use", which was used in article 21, and the analagous term "official activities", it might be desirable to explain in the commentary the meaning and scope of those terms. The explanation given in article 22 might not adequately meet the exigencies of the situation.

46. His delegation generally endorsed the text of article 21. However, it would prefer to replace the word "large" in paragraph 2 with the word "important", which provided a qualitative test.

47. Lastly, he expressed the hope that the draft articles would contain a provision stating explicitly that the privileges and immunities were intended for the efficient performance of the function of international organizations.

48. Turning to the Commission's long-term programme of work (paras. 328-330 of the report), he stressed the importance of that question from the point of view of the Commission's future. As the review organ of the parent body, the Sixth Committee had a responsibility to guide and direct the Commission in the choice of the right topics.

49. After referring to the Survey of International Law prepared by the Secretary-General in 1971 (A/CN.4/245), he emphasized that, in bringing up to date its long-term programme of work, the Commission should bear in mind the

(Mr. Al-Baharna, Bahrain)

practical rather than theoretical nature of the topic envisaged. It was true that the Commission had in the past centred its attention on traditional international law, and there might also be an element of truth in a comment made by UNITAR in 1981 to the effect that the Sixth Committee had sometimes been reluctant to entrust high-priority issues to the Commission because it did not consider it to be receptive to innovation.

50. Now that the Commission had completed the codification of a large segment of traditional international law, the time had come for it to embark upon topics which were different both in nature and in substance from those considered during the past four decades. His delegation therefore wished to urge members of the Committee not to feel hesitant in entrusting to the Commission topics of an economic nature which required legal regulation.

51. One such topic ripe for codification and development was the new international economic order. The International Law Association had taken up the study of the subject in 1978, and its private law aspects were being studied by the United Nations Commission on International Trade Law. The International Law Commission, proceeding step by step and beginning with the more pressing needs of the international community, might possibly consider the public law aspects of the new international economic order.

52. Referring to the suggested list of topics in paragraph 330 of the report, he noted that three among them - topics (f), (g) and (h) - related to economic issues. The first of those topics, namely, "International legal regulation of foreign indebtedness", was a direct offshoot of the international debt crisis which had plagued the international community during the 1980s. The position of the indebted States had been made still more difficult by the absence of rules of public international law relating to monetary matters. There was consequently a need for the development of international rules relating to foreign debts.

53. The second topic, "The legal conditions of capital investment and agreements pertaining thereto", lent itself more readily to regulation through international law. The flow of capital from the industrialized West to the developing East had for some time formed the subject-matter of studies by economists. The question arose whether the time had come for international regulation of foreign investment through law. The third topic, "Institutional arrangements concerning trade in commodities", raised yet another economic problem which in the past had created difficulties for countries dependent on export earnings from one or several commodities.

54. All three problems impinged in one way or another on the economic sovereignty of developing nations. In view of the many difficulties involved, his delegation wished to propose that the Secretary-General should be authorized to carry out a study similar to the 1971 Survey to investigate the feasibility of codifying those three topics. Of the other topics in the list, (a) and (i) were sequential upon the topics of the law of the non-navigational

(Mr. Al-Baharna, Bahrain)

uses of international watercourses and of international liability for injurious consequences arising out of acts not prohibited by international law and, as such, deserved to be included in the Commission's long-term programme of work.

55. At the same time, the Commission should avoid taking up items which fell within the mandate of other United Nations bodies or were already being considered by them. It was important that in choosing new topics for consideration during the next quinquennium of the Commission, the Committee should apply the criterion of practicability as well as that of meeting the international community's needs.

56. With regard to the possibility of splitting the session of the Commission in two parts, referred to in paragraph 339 of the report, he said that the Committee should not, at the current stage, concern itself with that question or with that of the venue of sessions of the Commission. The issue was a highly delicate one and should be left for the Commission to discuss at its next session, as it proposed to do. Since its establishment in 1947, the Commission had traditionally held one continuous annual session at the United Nations Office at Geneva. Any premature suggestion to change that long-standing tradition might affect the efficiency of the Commission's work or of the research work of its members, facilities for which were easily accessible at the Palais des Nations in Geneva. His delegation therefore urged that the matter should be left in abeyance pending a recommendation by the Commission.

57. Sir Arthur WATTS (United Kingdom), speaking on chapter VI of the Commission's report on the topic "Relations between States and international organizations", drew attention to a fundamental problem which arose in connection with the topic. One of the main criteria for determining the extent of the privileges and immunities to be accorded to a given organization were its functional requirements; yet each international organization had its own characteristics and requirements and hence a different need for privileges and immunities. To prepare binding, uniform rules to apply generally to international organizations of a universal character was therefore found to be difficult, and it might be better if the Commission directed its work on the topic towards developing guidelines and recommendations to be adopted by States and international organizations as they saw fit.

58. Turning to the question of the Commission's working methods (chap. VIII, sect. A), he recalled that at the previous session of the General Assembly a number of delegations, including his own, had expressed concern at certain aspects of the way in which the Commission worked. It was therefore gratifying to see from the report currently under consideration that the Commission had introduced a number of improvements in its working methods. It was particularly praiseworthy that the Commission, even in the last year of its current term, had recognized that changes needed to be made and had made them. Instead of attempting to consider the substance of all the topics on

(Sir Arthur Watts, United Kingdom)

each agenda, it had adopted certain priorities; it had set itself the target of adopting sets of draft articles on only three topics, and, as everyone had noted, it had achieved that target. Such success had been due not only to the establishment of priorities but also, in large part, to the Commission's wise decision to allow two weeks of concentrated work by the Drafting Committee at the beginning of its forty-third session. That practice, in particular, was one which the members of the new Commission might wish to follow in building on the experience of the past five years.

59. His delegation agreed with the statement in the report of the Working Group on Long-Term Programme of Work, reproduced in the annex to the report of the Commission, that one of the ways in which the Commission could contribute to the objectives of the United Nations Decade of International Law would be to finalize the work on the topics currently on its agenda. It was indeed highly desirable that the new Commission should, during its term of office, complete work on State responsibility - perhaps the last of the classical subjects on the Commission's agenda - and on international liability for injurious consequences arising out of acts not prohibited by international law.

60. So far as new topics for inclusion in the Commission's programme of work for the next five years were concerned, his delegation, while fully agreeing with the selection criteria set out in paragraph 7 of the Working Group's report, wished to suggest an additional criterion, namely, that the topic should offer a reasonable prospect of being one on which Governments could come to some degree of agreement on the basis of the Commission's work. It was not possible, of course, to know in advance how the Commission's work on a topic would evolve; the test might therefore have to be the negative one of avoiding topics where eventual lack of general agreement seemed predictable. Whether expressed positively or negatively, the point had an important bearing on the standing of the Commission's work, and thus of the Commission itself, within the international community.

61. Against that background, he had to admit that, for the moment at least, his delegation was not particularly attracted to any of the topics listed in paragraph 330 of the report. The list, and other topics which might be suitable for consideration by the Commission, would require very careful thought. In any event, the new Commission would be fully occupied in the next two or three years, and hasty decisions were certainly not called for at the current juncture. In reflecting on the issue, it should be recalled that the Commission's work on the major classical subjects of international law was now largely completed; the time had come for a change of emphasis with regard to the subjects which the Commission should tackle, the procedures it should employ in doing so, and the results to be expected from the conclusion of its work. Subjects for future consideration by the Commission would probably tend to be much more specific than in the past. They would be required to meet the international community's practical needs, covering both specific short-term problems and, in new areas of international activity, the timely provision of a long-term legal framework. The changes taking place within the

(Sir Arthur Watts, United Kingdom)

international community were making traditional concepts of the codification of interntional law obsolete. In a multi-structured world community with overlapping legal competences and a proliferation of treaty networks there was a need for coordination, with instruments which had become irrelevant or had been superseded being gradually discarded. The Commission might well be the appropriate body to undertake at least some of the work involved.

62. As for procedures, they needed to be reconsidered both in the Commission and in the Sixth Committee. The Committee could not, of course, dictate to the Commission the procedures which it should adopt. At the same time, however, it should clearly indicate what it hoped to receive from the Commission, while leaving it to the Commission to decide how best to provide it. One of the Committee's requirements was undoubtedly for a speedy reaction by the Commission in appropriate cases. In its work on an international criminal court the Commission had shown that it could do extremely valuable work very quickly. Those possibilities could be further developed. Some attention might be given in that context to finding ways of appointing Special Rapporteurs immediately after the General Assembly had referred a new and urgent subject to the Commission, permitting work on the subject to begin straight away, without having to wait for an appointment to be made at the following summer's session so that, in most cases, a year was effectively lost before work could really begin. It might even be appropriate to consider whether the Special Rapporteur's system as a whole still responded in the most effective way possible to the needs of the 1990s. So far as the Sixth Committee was concerned, it should not hesitate in appropriate cases to indicate time-limits by which it would wish to receive the Commission's views on a particular topic.

63. Lastly, as to the end results of the Commission's work, he remarked that the traditional pattern of a set of draft articles prepared with a view to the holding of a conference at which a convention might be adopted seemed less appropriate than in the past. Legal guidelines, or a framework of legal principles, or draft model articles might all, in appropriate cases, be of greater practical value than draft articles designed to be adopted at a conference which, for various reasons, might never be held. Those alternatives might be particularly useful where the Commission was seeking to establish a legal framework in a new area of international activity.

64. In a rapidly changing world it was important that international law should hold a respected place, and important for international law that the International Law Commission should continue to play its valuable, constructive, scholarly and independent role. The relevance of international law to the international community's collective problems had seldom been greater. The same was true of the Commission's potential to establish a sound international legal framework for future generations. The Commission fulfilled its potential in a variety of ways. The Committee naturally tended to concentrate on the Commission's work on substantive topics, but the other activities noted in chapter VIII of the report, and particularly the annual

(Sir Arthur Watts, United Kingdom)

International Law Seminar arranged by the Commission for the benefit of young international lawyers, mostly from developing countries, should not be overlooked. His Government regarded the Seminar as a most valuable contribution to the future of international law, and would be contributing $5,000 towards the cost of facilitating the attendance of suitable students.

65. Mr. MOMTAZ (Islamic Republic of Iran), speaking on the programme and working methods of the Commission (chap. VIII, sect. A, of the report), said that the subject was particularly relevant both because the current quinquennium was ending and because the Commission had completed its work on jurisdictional immunities of States and their property and had provisionally adopted on first reading a set of draft articles on the law of the non-navigational uses of international watercourses. Thanks were due to the Working Group on Long-term Programme of Work for its efforts.

66. In its report to the forty-fifth session of the General Assembly, the Commission had stated that there was broad agreement that, in selecting new topics, account should be taken of the pressing needs of the international community at its present stage of development (A/45/10, 325/, para. 2). His delegation agreed with that view and wished particularly to stress the need to adapt existing law to new realities. The ever-widening disparities between different countries in the economic sphere deserved special attention in that context. He therefore welcomed the inclusion of items (h), (f) and (g), all dealing with economic issues, in the list of topics from which the Commission intended to select topics for inclusion in its long-term programme of work.

67. A further factor that should be taken into consideration in the choice of topics was the realistic prospect of success of the proposed codification or progressive development of international law. The harmful consequences of a potential failure of the exercise could hardly be overemphasized. Topics which gave rise to major controversy among States should preferably be avoided, as also should areas in which the necessary jurisprudence was lacking. In other words, topics such as the rights of national minorities (topic (j) in the list) or the law of confined international ground waters (topic (a)) were best left aside. The time factor also had to be taken into account. In that connection, he endorsed the Working Group's view that most of the new topics should be susceptible to completion, if possible, within the Commission's next term (A/46/10, annex, para. 7). Now that the era of major codifications appeared to have ended, it was to be hoped that the Commission would arrive at conclusions more rapidly. In that connection, he stressed the importance of the topics currently under consideration and expressed the hope that due priority would be given to State responsibility and international liability for injurious consequences of acts not prohibited by international law. Lastly, he stressed that it was the right and duty of the General Assembly to indicate its priorities while respecting the Commission's autonomy in carrying out its mandate.

(Mr. Momtaz, Islamic Republic of Iran)

68. The Commission should also preserve its autonomy with regard to its working methods. In view of the growing number of topics which required scientific and technical expertise, and of the interdisciplinary nature of most of the subjects discussed by the Commission, the use of expert services was indispensable. The best way of overcoming that difficulty appeared to be to seek assistance from the United Nations specialized agencies or from independent experts. In addition, the Commission might decide to designate certain members to work with the Special Rapporteur in the elaboration of draft articles. While his delegation was strongly opposed to the creation of subcommissions, small working groups on technical subjects should not prevent the members of the Commission from participating fully in the adoption of all decisions.

69. In the view of his delegation, the General Assembly's role should be limited to bringing to the Commission's attention the constraints imposed by international relations. The Sixth Committee could provide flexible guidelines for the Commission's work. In order to faciliate cooperation between the Commission and the Sixth Committee, some delegations had urged that the Commission's report should be transmitted to Governments at the earliest possible date. His delegation supported that suggestion, as well as the proposal that the Commission's session should be split into two parts. Iran believed that it would be advisable for the Commission to consider the comments of Governments immediately after each session of the General Assembly, without waiting for its own annual session. Perhaps the Secretariat could submit a statement of the administrative and financial implications of that proposal.

70. Mr. VOICU (Romania) said that his delegation's comments on the Commission's report were of a general and preliminary nature because the drafts under consideration required further study by Governments and specialized national bodies.

71. With regard to chapter II, his delegation noted with satisfaction that the Commission had taken into account a number of the observations which Romania had made concerning previous versions of the draft. He welcomed the Commission's decision to replace the terms "limitations on" and "exceptions to" with the more general experession "proceedings in which State immunity cannot be invoked"; that formulation was very close to the neutral one suggested by his country, namely, "activities of States in respect of which States agree not to invoke immunity".

72. His delegation had also taken note with interest of the recommendation on the convening of an international conference of plenipotentiaries to consider and adopt the draft articles on jurisdictional immunities of States and their property and of the Austrian proposal to host the conference at Vienna, should it be convened.

(Mr. Voicu, Romania)

73. With regard to chapter III, his delegation noted that the Commission had taken into consideration the relevant contributions of the International Law Association which had dealt with the subject in 1980. He welcomed the solution adopted concerning the question of joint institutional management which showed that the best approach was to draft recommendations on which States could base their own definitions of the responsibilities and powers of whatever body they decided to establish. His delegation also recalled the doubts previously expressed with regard to the appropriateness of dealing with aspects of the topic relating to armed conflicts by means of a framework agreement; such an approach could impinge on the law relating to armed conflicts or on other drafts being prepared by the Commission, such as the draft Code of Crimes against the Peace and Security of Mankind.

74. Turning to chapter V, he said that States of origin must unquestionably take appropriate measures to prevent or minimize the risk of transboundary harm. In that connection, the role of consultations should be emphasized and all States concerned should be urged to consult with each other in a spirit of cooperation. Obviously, consultations did not preclude the adoption of unilateral preventive measures; the Special Rapporteur's texts and comments were fully relevant in that regard. At the same time, he emphasized the practical value of requiring the State of origin to counteract the effects of an incident which had already occurred and which presented an imminent and grave risk of causing transboundary harm.

75. The question of whether the future convention should apply to harm caused in the territory of a single State or of several States was irrelevant, because if such harm affected several States, there must obviously be rules which would apply to that situation. However, if the activity of a State caused harm to the "global commons", the situation went beyond the scope of the draft under consideration. In addition, his delegation was of the view that the future convention should provide for the direct liability of transnational corporations operating in the territory of other States whose activities might cause transboundary harm. In that connection, his delegation saw merit in the statement made at the previous meeting by the representative of Japan emphasizing the need for the Commission to specify the relationship between the proposed convention and existing conventions or those which were likely to be concluded in the future on either a multilateral or a bilateral basis.

76. As to chapter VII, his delegation regretted that the Commission had been unable to consider the topic "State responsibility" owing to lack of time. Romania agreed with other Member States that State reponsibility was one of the key topics in international law and required extensive study. However, should the Commission conclude that the topic was not yet ready for codification, the Sixth Committee might suspend consideration of it until such time as it could be dealt with successfully.

77. Turning to chapter VIII, he noted with satisfaction the improvements in the Commission's working methods and welcomed the decision to invite Special Rapporteurs to attend the meetings of the Sixth Committee devoted to the Commission's report.

(Mr. Voicu, Romania)

78. Drawing attention to the topics listed in paragraph 330, he said that the Commission would obviously be unable to deal with 12 new items in the immediate future. As emphasized by the Committee of Legal Advisers on Public International Law of the Council of Europe, the topics to be dealt with by the Commission should respond to the pressing needs of the international community, should be of a predominantly practical nature and should be susceptible to completion in a few years' time. He endorsed the view expressed by the United Kingdom representative, namely, that the topics envisaged should be those on which Governments were likely to be able to reach agreement on the basis of the Commission's work. Taking into account those considerations, his delegation believed that the Commission should complete its work on the remaining items on its agenda before undertaking new ones. Accordingly, the question of the Commission's future programme of work should be the subject of informal consultations, with participation by members of the Commission.

79. Mr. SHESTAKOV (Union of Soviet Socialist Republics) expressed his delegation's hope that the Commission would embark on the second reading of the draft Code of Crimes against the Peace and Security of Mankind and of the draft articles on the law of non-navigational uses of international watercourses at its forty-fourth session, in 1992, without awaiting the comments and observations of States due to be submitted to the Secretary-General by 1 January 1993. Any delay in the preparation of those important drafts was to be avoided. His delegation took the view that during the next quinquennium the Commission should concentrate on the completion of its work on the still outstanding topics, namely, the draft Code of Crimes against the Peace and Security of Mankind; the law of the non-navigational uses of international watercourses; State responsibility; international liability for injurious consequences arising out of acts not prohibited by international law; and relations between States and international organizations. As for the list of topics from which the Commission intended to select topics for inclusion in its long-term programme of work (A/46/10, para. 330), his delegation, taking into account the views expressed on the subject by many delegations in the Sixth Committee, wished to suggest that the Commission should select only such topics as fell within the scope of its competence and were likely to be widely supported by States. In conclusion, he expressed the hope that the Commission would make an important contribution to the attainment of the objectives of the United Nations Decade of International Law.

80. Mr. NJENGA (Observer, Asian-African Legal Consultative Committee) said that since the Second World War the emergent Asian and African States had encountered the constraints of operating in a world legal order which showed little concern for their problems. The Asian-African Legal Consultative Committee had been established as a forum for exchange of views and information on legal matters of common concern to the two regions. In recent years its programme of work had focused on projects and studies relating to the law of the sea, international protection for refugees, international economic cooperation for development and issues relating to the United Nations Conference on Environment and Development.

(Mr. Njenga)

81. Close and continuing cooperation between the Consultative Committee and the United Nations dated back to 1956, when the Consultative Committee had undertaken a systematic examination of the work of the International Law Commission from the Asian-African perspective. Since then, the Consultative Committee had regularly reviewed the work of the Commission, and the Chairman of the Commission had expressed the view that the Asian and African States could make a useful contribution to its deliberations. The Consultative Committee also had close links with the International Court of Justice.

82. One topic of particular concern to the Consultative Committee was the problem of refugees. Its secretariat, in collaboration with the Office of the United Nations High Commissioner for Refugees, had accordingly organized a workshop on international refugees and humanitarian law in October 1991, with the aim of enhancing the awareness of Governments and promoting ratification of the relevant international conventions. Participants in the workshop had recommended that the Consultative Committee should consider the possibility of preparing draft model legislation which might be of assistance to Governments in drafting their own legislation on matters relating to refugees.

83. The Consultative Committee had also been following with keen interest developments in the field of the environment, international trade law and the law of the sea. In the field of trade law the Consultative Committee maintained fruitful official relations with both UNCTAD and UNCITRAL. With regard to the law of the sea, the Consultative Committee considered that the Commission could usefully include in its new work programme an item on the identification and codification of the legal elements of the peaceful uses of the ocean bed and sea floor.

84. In conclusion, he said that the thirty-first session of the Consultative Committee, to be held in Pakistan in January 1992, would, he hoped, provide an opportunity for the developing countries to establish a concerted position on the issues to be discussed at the 1992 United Nations Conference on Environment and Development.

85. Mr. Afonso (Mozambique) resumed the Chair.

86. Mr. VUKAS (Yugoslavia), referring to chapter VI of the Commission's report said that the texts submitted by the Special Rapporteur constituted a useful summary of the contemporary practice of States and international organizations and a suitable adaptation of the rules of diplomatic law to the specific situation of international officials and their activities. Furthermore, the drafts were based on existing multilateral conventions and on the headquarters agreements concluded by international organizations; thus, an early and successful outcome of the Commission's work on the topic could be envisaged.

(Mr. Vukas, Yugoslavia)

87. With regard to chapter VIII, he said that the Working Group established to consider the Commission's long-term programme of work, and the Commission itself, had chosen topics of great importance to the international community. It was logical for the Commission to devote itself increasingly to the progressive development of international law. With regard to the specific topics listed by the Commission in paragraph 330 of its report, it would be useful to systematize the legal rules concerning international migrations (topic (c)), extradition and judicial assistance (topic (d)) and the legal aspects of disarmament (topic (e)), in view of the abundance of regional, subregional and bilateral norms on those subjects. While that would be a difficult task, it would be less difficult, from the technical point of view, to codify and develop new rules concerning the three topics relating to international economic law, namely, the international legal regulation of foreign indebtedness, the legal conditions of capital investment and agreements pertaining thereto, and institutional arrangements concerning trade in commodities. Obviously, it would be difficult to reconcile various economic interests, particularly those of the developed and the developing countries.

88. His delegation had some doubts concerning the two topics in the list relating to environmental law. With regard to the international legal aspects of the protection of the "global commons", Yugoslavia had already stated its views in the context of other discussions. As to the law of confined international groundwaters, his delegation did not know whether the international community had sufficient technical information to be able to develop legal rules in that area.

89. With regard to topic (e), an analysis of the legal effects of resolutions of the United Nations, prepared by a body with the Commission's reputation, would be very useful in assessing the role of these resolutions in the system of sources of comtemporary international law.

90. As a member of a commission of inquiry established by the International Labour Organisation, he believed that it would be useful for the Commission to examine topic (k), "International commissions of inquiry (fact-finding)" and in particular to study the role of such commissions as a means of settling international disputes in comparison with other means.

91. With regard to the rights of national minorities (topic (j)), he said that, following the Second World War, the issue had been poorly received in the United Nations; apart from article 27 of the International Covenant on Civil and Political Rights, no other legal rules had been adopted. A draft declaration on the rights of national, ethnic, religious and linguistic minorities, proposed by Yugoslavia in 1978, had not yet been adopted. Most non-European countries had not had much interest in the question. The situation had changed, however, with the disappearance of the divisions in Europe. Within a very short time, both the East and the West had begun to show enthusiasm for the development of rules for the protection of minorities. The most significant results had been the adoption by the

(Mr. Vukas, Yugoslavia)

Conference on Security and Cooperation in Europe of a document signed at Copenhagen and the preparation of a draft convention by the Council of Europe. Extremist nationalism had, however, put an end to such efforts. Recent events had again demonstrated the impossibility of arriving at a satisfactory definition of national minorities. Nevertheless, the link between the rights of national minorities and the rights of peoples was one of the most serious issues in the current Yugoslav crisis. The problem of minorities could not be studied and solved in isolation; it was merely one aspect of the broader problems of multinational societies.

AGENDA ITEM 126: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued) (A/C.6/46/L.6/Rev.1).

92. The CHAIRMAN said that Niger had joined the list of sponsors of draft resolution A/C.6/46/L.6/Rev.1.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/46/L.7)

93. The CHAIRMAN said that Mali, Nicaragua and Niger had joined the sponsors of draft resolution A/C.6/46/L.7.

The meeting rose at 1.05 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
37th meeting
held on
Wednesday, 13 November 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 37th MEETING

Chairman: Mr. AFONSO (Mozambique)

later: Mr. SANDOVAL (Ecuador)

CONTENTS

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (continued)

AGENDA ITEM 127: UNITED NATIONS DECADE OF INTERNATIONAL LAW

AGENDA ITEM 126: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued)

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

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The meeting was called to order at 3 p.m.

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (continued) (A/46/10, A/46/405)

1. Mr. LOULICHKI (Morocco), referring first to chapter V of the report of the International Law Commission, concerned with international liability for injurious consequences arising out of acts not prohibited by international law, said it was encouraging that the English title of the draft articles was to be aligned with the French version, since the word "activities" reflected the subject-matter more appropriately than the word "acts".

2. As to the question of whether the Commission's work should include, in addition to activities causing transboundary harm, activities involving risk of causing such harm, it would be useful to combine activities involving risk - especially in respect of prevention - and activities of harmful effects in respect of compensation and reparation.

3. On the question of identifying activities or dangerous substances, his delegation had reservations about the value of a list which, at all events, would inevitably be restrictive; moreover, the Commission did not have the necessary technical information for the preparation of such a list. A general definition seemed better suited to the evolving and complex nature of the subject.

4. There had not been unanimity within the Commission regarding the inclusion in the topic under consideration of spaces that were not under the jurisdiction or control of States "global commons". It would be premature to try to establish general principles of international law on the subject in the absence of sufficient background information.

5. The principles of prevention and reparation had been of particular concern to the Commission and had given rise to differences of view. From the point of view of prevention, the procedural obligations (the obligation of due diligence, the peaceful settlement of disputes) which were incumbent on the State of origin of the dangerous activity seemed well established in general international law and did not need to be reaffirmed in detail in the draft articles.

6. The Commission had considered two main aspects of reparation for damage: in respect of the first, assignment of liability, Morocco maintained the position it had expressed at the forty-fifth session, namely, that it was in favour of primary liability of the operator, with State liability entering into play only if the victim could not secure satisfaction or if the insurance of the operator was inadequate. As to the second aspect, compensation, it must be ensured that all significant harm was compensated, whether or not the cause was a dangerous activity; there should be provision for reduction in the

(Mr. Loulichki, Morocco)

amount of compensation in the light of the factors and circumstances of the specific situation, including the economic situation of the States concerned.

7. On the question of the nature of the instrument to be prepared by the Commission, his delegation felt that a framework convention could serve as a guide to States, which would be left to formulate their detailed obligations in bilateral or regional agreements.

8. The Commission's work on the topic, begun more than 10 years previously, was of clear importance for the international community because it aimed to establish general norms which would safeguard the regional and international environment. It was therefore a priority topic. Further consideration should be given to the Commission's idea of establishing a working group to consider certain aspects of topics that were in course of codification, and of splitting its annual session into two parts. At the same time the Sixth Committee should continue its consideration of modalities for consideration of the Commission's report with a view to greater rationalization and a more fruitful dialogue between the International Law Commission and the General Assembly.

9. Mr. RAYA (Philippines), referring to the topic "Jurisdictional immunities of States and their property", said that the Philippines supported the theory of restrictive, as opposed to absolute, immunity of States. On the question of characterizing a contract or transaction as "commercial" in nature for the purposes of recognition of immunity, his delegation shared the concerns of some delegations over the test of purpose. If that secondary test was meant to safeguard the interests of developing countries, the correct standard for appraising the test was not the motivation, no matter how noble, but the logic, the practicability and the fairness of such a test. However, while it could legitimately be feared that a private party dealing with a sovereign State could be at a disadvantage when the purpose of the transaction was not made clear to him or when the contract did not specify that the State was acting in a sovereign as opposed to a commercial capacity, it could not be concluded on the basis of that concern that the secondary test was flawed. It would be ignoring the lessons of history and the evolution of jurisprudence on contract law to restrict the test to the nature of a transaction.

10. Instead of assuming that a private party dealing with a sovereign State was ipso facto in a disadvantaged position, it should be postulated that, whether States or private parties were involved, the agreement to enter into a contract was free and voluntary, with both parties to the contract capable of adequately protecting their rights and recourses under the contract.

11. The State must be clear and forthcoming with the private party that it contracted with, but there was no reason why the private party could not ask or demand, as a condition to agreement, that the nature and purpose of the transaction be made clear. In the same vein, the private party could be expected to negotiate for provisions which delineated clearly what waivers of

(Mr. Raya, Philippines)

immunity, what laws and what courts or arbitration procedures would govern the transaction or contract.

12. In view of the complexity of contracts or transactions, particularly when contested issues or disagreements came about after they were entered into, it would be prudent and logical to leave room for a secondary test of purpose when determining the characterization of a contract or transaction.

13. His delegation welcomed the work that had been accomplished so far on the draft Code of Crimes against the Peace and Security of Mankind but had some reluctance about considering the question of establishing an international criminal court in the absence of clear consensus on the need for such a court, the powers and jurisdiction to be conferred on it, the laws by which it was to be governed and the precise role of such a court in relation to national courts.

14. While recognizing the need for prosecution and punishment of crimes against the peace and security of mankind, his delegation saw value in entering into bilateral or multilateral treaties and encouraging States to adhere rigorously to them, and in establishing strong cooperation among States with respect to matters covered by those agreements. It was concrete examples of agreement and cooperation, as a series of precedents, that would in the long run bring about the consensus necessary for the establishment of an international criminal court.

15. His delegation commended the work that had been done on the difficult but important topic "State responsibility" and considered that it was necessary to address the key issues of transboundary harm and compensation.

16. With regard to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", his delegation agreed that the word "activities" was more appropriate than the word "acts" used in the English title. In that respect, the extent of liability of the State for transboundary harm caused by private entities must be further clarified.

17. Lastly, his delegation supported the view of the United Kingdom representative that the topics considered by the Commission should correspond to practical needs and offer reasonable prospects of agreement. The Commission's work did not have to result in draft articles to be approved in the form of conventions by a conference. The formulation of guidelines instead of rules of a binding nature could be sufficient in some cases.

18. Mr. VILLAGRAN-KRAMER (Guatemala), referring to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said that the Special Rapporteur had been correct in seeking common ground between the concept of responsibility, as it existed in Roman law, and the twin concepts of "responsibility" and "liability" in Anglo-Saxon law.

(Mr. Villagran-Kramer, Guatemala)

19. However, the Special Rapporteur had somewhat overemphasized the principle of fault, which placed the burden of proof on the victim, to the detriment of the principle of strict liability, or liability for activities involving risk, which placed the burden on the author of the harm.

20. Given modern technological advances and the attendant proliferation of risks, the theory of risk assumed great importance. That was so, for example, in cases in which a private enterprise located in country A engaged in activities which, by their nature, were capable of causing harm in country B. It was therefore easy to understand the concern to which the subject gave rise in the developing countries, which were most likely to suffer harm caused by the highly industrialized countries when they were host to enterprises whose activities included a high element of risk.

21. Like harm caused to watercourses, to territorial seas, to the high seas, or to watercourses used for non-navigational purposes, for which precise rules had been established, transboundary harm arising from industrial activities was quite capable of legal regulation and codification. The question remained, however, as to whether the Commission should follow the growing trend towards considering that harm could be imputed to a party only when there was fault on the latter's part, the slight, serious or very serious nature of which could be measured, or whether it should follow the principle of liability for activities involving risk.

22. In any event, in so doing, the Special Rapporteur should attach due importance to the problem created for the developing countries by the clash between the concept of responsibility in the classical sense and the concept of liability in Anglo-Saxon law.

23. Turning to the topic "Relations between States and international organizations", he said that, while it was true that international organizations were not States and did not possess the attributes, rights, immunities and privileges granted to States, they nevertheless operated in the international sphere and were subjects of international law and should therefore be granted the attributes and privileges conferred on States.

24. In its report, the Commission proposed many formulas and solutions to the very complex problems which international organizations faced daily. In that connection, a more flexible approach should be adopted when considering the question of the documents and archives of organizations. In view of the advances in modern technology, for example, computers and computer files could be considered part of the archives of international organizations. Consequently, the text being prepared should propose technical criteria for determining the property, assets and archives of an international organization.

25. It was to be regretted, however, that the Commission had not considered the question of the status of international organizations vis-à-vis the courts or authorities of a State which was not a member of the organization. Indeed,

(Mr. Villagran-Kramer, Guatemala)

there were many cases in which the jurisdictional immunity of international organizations vis-à-vis the courts of a State had been invoked, and cases in which courts were reluctant to acknowledge that international organizations provided such immunity. The question deserved to be considered for two important reasons: firstly, if the Commission had not proposed in the draft articles on the jurisdictional immunities of States and their property a special provision on contracts of employment, then it could not do so in respect of the relations between international organizations and their locally recruited staff or agents. Secondly, States tended to extend their competence to areas which up to that point had been in the domain of international law and, far from being limited to the immunities of States, the phenomenon of expanding sovereignty also encroached on the privileges and immunities of international organizations.

26. Mr. KOROMA (Chairman of the International Law Commission) said he had been very impressed by the detailed and thought-provoking debate on the Commission's report in the Sixth Committee. By giving special rapporteurs the possibility of attending from time to time the debates of the Committee on their respective topics, the General Assembly had taken a very felicitous decision which the Commission could only welcome. Many representatives had praised the Commission for having completed the second reading of a set of draft articles and the first reading of two other sets of draft articles. They had also recognized the quality of the work accomplished. At the same time, a host of constructive ideas had been presented.

27. The draft articles on the jurisdictional immunities of States and their property had been generally viewed as offering a good basis for the elaboration of a convention on the subject. In his view, that was a good indicator of both the quality of the draft and its topicality in a world in which the intensification of international relations, particularly of commercial relations, was a primary goal.

28. The work on the draft Code of Crimes against the Peace and Security of Mankind had also elicited a great deal of interest. A number of representatives had indicated that their comments on the various provisions of the draft were without prejudice to the written observations their Governments would submit at a later stage. Both the oral comments and the written observations of Governments would be extremely useful to the Commission in the fine tuning of the draft on second reading, as well as in devising acceptable solutions to the outstanding issues, including that of penalties, on which a most interesting exchange of views had taken place in the Committee.

29. The question of the establishment of an international criminal jurisdiction had similarly given rise to an interesting exchange of views. It seemed to be viewed by many as worthy of further consideration, even though some had struck a note of caution in that connection. He hoped that the Committee would find it possible to give the Commission as clear guidance as possible on the future orientation of the work in that area and thereby enable it to meet as closely as possible the expectations of the General Assembly.

30. The draft articles on the law of the non-navigational uses of international watercourses had generally met with a favourable response, although some questions had been raised on a variety of issues, such as the concept of framework agreement, the definition of an international watercourse and the exact content of the notion of appreciable harm. Exchanges of views, which had already taken place in the Commission, had been resumed in the Committee, thereby providing additional proof of the intellectual cross-fertilization between the two bodies. He wished to emphasize that the second reading of the draft on international watercourses and on the draft Code of Crimes required that Governments should strictly abide by the deadline of 1 January 1993 for the submission of their written comments. It would be a great shame if valuable comments failed to receive attention on account of their lateness.

31. The Commission's work on State responsibility and on international liability for injurious consequences arising out of acts not prohibited by international law had been of an interim or exploratory nature. Yet, the debate in the Sixth Committee had been extremely rich and interesting, which was a clear indication of the international community's interest in the two topics and of its desire to see the work in those areas proceed as expeditiously as possible.

32. The Special Rapporteur for the topic "Relations between States and international organizations" had been deservedly praised by delegations, some of whom, nevertheless, had expressed doubts about the advisability of treating the topic as a priority one. The Commission would no doubt give due weight to all views expressed on the matter.

33. With regard to its programme of work, the newly-elected Commission would no doubt devote special attention to the consideration of its methods of work, taking special account of the suggestions made in that respect by the Committee. No clear consensus had emerged as to the topics which might be considered by the Commission in the immediate future. However, the tentative list contained in paragraph 330 of the report had served as a useful reminder that the time had come to identify new subjects to be included in the Commission's agenda.

34. Lastly, he referred to the International Law Seminar. The Commission attached great importance to the Seminar sessions because they enabled young professors, lawyers and diplomats the world over, especially from the developing countries, to familiarize themselves not only with the work of the Commission, but also with the activities of the many specialized agencies located in Geneva, as well as with general and current topics of international law. He hoped that the General Assembly would appeal to States that were able to do so to make financial contributions for the seminar to be held in 1992. He thanked the United Kingdom delegation, which had announced at the 36th meeting that its Government would make a contribution for that purpose.

35. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 128 on the report of the International Law Commission on the work of its forty-third session.

AGENDA ITEM 127: UNITED NATIONS DECADE OF INTERNATIONAL LAW (A/46/79, A/46/317-S/22823, A/46/335, 372, 383 and Add.1 and 587; A/C.6/46/4; A/C.6/46/L.8)

36. Mr. FLEISCHHAUER (Under-Secretary-General, the Legal Counsel) introduced the report of the Secretary-General on the United Nations Decade of International Law (A/46/372). The report contained an analysis of replies received on the implementation of the Programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law, in the annex to General Assembly resolution 45/40, as well as a general review of activities of the United Nations relevant to the progressive development of international law and its codification.

37. The Secretary-General attached particular importance to the Programme as a means of promoting a decisive role for international law in international relations. In his annual report on the work of the Organization (A/46/1), the Secretary-General had expressed the view that certain events connected with the emergence of a new world order would test the capacity of nations to cooperate in the United Nations in developing effective global strategies and in the evolution of respected - even enforceable - international law.

38. Mr. FARRUKH (Chairman of the Working Group on the United Nations Decade of International Law), introducing the report of the Working Group on the United Nations Decade of International Law (A/C.6/46/L.8), said that the Working Group had held five meetings during which it had considered, section by section, the report just presented by the Under-Secretary-General (A/46/372). He outlined the main features of the Working Group's comments, as contained in the six sections of the report.

39. The CHAIRMAN recalled that the Committee had decided at its 11th meeting on 8 October 1991 to invite the Secretary-General of the Permanent Court of Arbitration to speak during the debate on the United Nations Decade of International Law.

40. Mr. JONKMAN (Secretary-General of the Permanent Court of Arbitration) thanked the Committee for giving him the opportunity to speak, since the Permanent Court of Arbitration, whose International Bureau he headed, had not yet obtained observer status with the General Assembly and was not part of the United Nations system.

41. It was appropriate for him to be speaking because of the special relationship between the Permanent Court and the item under discussion. In fact, the Permanent Court was the oldest intergovernmental institution dedicated to the task of resolving disputes between States. Since 1935 its facilities had been available for resolving disputes between States and

(Mr. Jonkman)

private parties. Seventy-five States were parties to the Hague Conventions of 1899 and 1907, nearly half of them represented on the Committee. The Court was the only institution other than the League of Nations and the United Nations to be mentioned in the Charter by name.

42. The United Nations Decade of International Law offered an opportunity to recall the purposes and functions of the Permanent Court, which were essentially to promote the peaceful settlement of disputes between States and obviate, as far as possible, recourse to force in relations between States. The settlement mechanism to which the States parties to the Hague Conventions were most inclined was arbitration, as was clear from the name of the Court.

43. But the Court offered other solutions: good offices, mediation, fact-finding commissions and conciliation. It currently had available a panel of some 250 legal experts of recognized competence and impartiality, representing all the geographical regions with which the United Nations was familiar. The parties to a dispute were completely free to agree upon a settlement mechanism and on the procedures that would govern it. The arbitration rules prepared by the United Nations Commission on International Trade Law (UNCITRAL) and endorsed by the General Assembly on the recommendation of the Sixth Committee entrusted to the Secretary-General of the Permanent Court of Arbitration a function of high responsibility for the integrity of the arbitral process: they authorized him to designate the members of a tribunal in specified circumstances when the party or person entitled to make an appointment failed to do so.

44. Since 1937 the facilities of the Permanent Court of Arbitration had been available for conciliation proceedings. The Sixth Committee was examining the subject on the basis of draft United Nations rules for the conciliation of disputes between States placed before it by the Government of Guatemala (A/C.6/45/L.2). The draft rules incorporated, through article 23, paragraph 3, several articles from the Hague Convention of 1907 concerning commissions of inquiry. They provided, among other things, that conciliation commissions should meet at United Nations Headquarters, but the International Bureau would be ready and willing to offer its premises as an alternative neutral location. The Bureau could also offer, at a modest cost, documentation, secretarial and communications services and could in general relieve the parties of administrative burdens. The expenses of the Court were paid by means of regular contributions to an annual budget, so that parties using the facilities need pay only for outside services arranged at their request.

45. After nearly a hundred years of operations the International Bureau of the Court had accumulated a substantial fund of experience which it was prepared to make available to all States, whether they were parties to the Hague Conventions or not, and to private parties, whether or not they were nationals of States parties to the Conventions.

(Mr. Jonkman)

46. The Permanent Court of Arbitration also wished to draw the Committee's attention to action recently approved by its Administrative Council. Having noted the revolutionary changes that were currently taking place in international politics, particularly a willingness among States to cooperate in re-evaluating hitherto strongly held convictions, the Administrative Council had concluded that the time had come to remind States of the dispute-settlement services available to them through the Court. It had accordingly decided to ask its member Governments how the functioning of the Court could be improved, and to obtain views from experts in the field of international dispute settlement. As to the first initiative, the Bureau was now collating observations received from Governments, which it would publish in due course. As to the second, it had published a booklet entitled New Directions, which contained the results of a preliminary meeting of legal experts held at The Hague, conveying the very positive and constructive spirit of the views expressed at the meeting. But the Sixth Committee was obviously the most competent body in the matter and the Court needed its advice. It would therefore be very pleased to know the Committee's views on the booklet.

47. The Permanent Court of Arbitration had, since its inception, responded to an ideal, the vision of an institution competent to deal with all cases, accessible at all times, and capable of contributing effectively to the friendly settlement of international disputes. He hoped that during the Decade of International Law it would pursue the fulfilment of that vision and, by the dawn of the second millenium, would play a major role in preventing or resolving conflicts.

48. Mr. SEIN (Myanmar) said that the United Nations Decade of International Law should highlight the key role of the rule of law in enabling mankind to enjoy in peace the fruits of technological progress. He then reviewed the aspects of the programme of activities for the Decade to which Myanmar attached particular importance.

49. Regarding acceptance of and respect for the principles of international law, Myanmar had in 1991 acceded to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and to the Convention on the Rights of the Child.

50. Concerning means and methods for the peaceful settlement of disputes between States, Myanmar was convinced that the International Court of Justice had a pivotal role in that field, where a number of options could be explored, including conflict prevention, negotiation, good offices and conciliation.

51. At a time when a "new international law" was beginning to take shape and in which environmental law was to play a very important role, it was essential for developing countries to participate actively in the progressive development and codification of international law.

(Mr. Sein, Myanmar)

52. Myanmar devoted great attention to the teaching and study of international law, which was a compulsory component of law courses at the University. New postgraduate courses had been introduced in 1991, along with refresher courses for officers of the Attorney-General's Office. Trainees had been sent abroad for postgraduate studies and to attend seminars. Lastly, it was gratifying to note that all the judgments and advisory opinions of the International Court of Justice were to be translated into all the official languages of the Organization. That measure was bound to contribute to a wider appreciation of international law.

53. Mr. Sandoval (Ecuador) took the Chair.

54. Mr. VUKAS (Yugoslavia) said that the first term (1990-1992) of the United Nations Decade of International Law should make it possible to review the development of international law and to commence activities to give a new impetus to its role in the international community.

55. In looking at the replies received from States and international organizations concerning implementation of the programme of activities, as reproduced in the Secretary-General's report (A/46/372), he was particularly encouraged by the data concerning publication of periodical reports on the status of ratifications of and accessions to multilateral treaties, as well as on assistance and technical advice provided to States, particularly developing countries, to facilitate their participation in the process of multilateral treaty-making.

56. With regard to means and methods for the peaceful settlement of disputes between States, the Permanent Court of Arbitration and the Institute of International Law had indicated that they were considering undertaking studies of some important aspects of that question.

57. Concerning encouragement of the progressive development of international law and its codification, care would have to be taken to avoid any duplication between the programmes of international institutions and the long-term programme of the International Law Commission.

58. Of the long list of activities to encourage the teaching, study, dissemination and wider appreciation of international law, he would single out two: the course on the law of the sea which had been held in Dubrovnik a few weeks before the commencement of hostilities in Yugoslavia and which had been attended by 30 participants from 11 countries; and the symposium on developing countries and international environmental law held in Beijing in August 1991, the final report on which was contained in document A/C.6/46/4.

59. It was disappointing that only three countries - Mexico, Romania and Uruguay - had established national committees for the implementation of the programme for the Decade and that no financial support had been promised. Nevertheless, the first year of implementation of the Decade was a major step in the right direction.

60. Mr. VAN SCHAIK (Netherlands), speaking on behalf of the European Community and its 12 member States, said that the Twelve wished to reaffirm their endorsement of General Assembly resolution 45/40 of 28 November 1990, which they had sponsored. It appeared from the replies reproduced in the Secretary-General's report (A/46/372) that the Programme for the activities to be commenced during the first term (1990-1992) of the Decade had prompted States and international organizations to think about specific ways of strengthening the role of international law in the years ahead. The time had come to take action and to ask what specific contribution the Sixth Committee itself should make in that regard.

61. Concerning means and methods for the peaceful settlement of disputes between States, there was a need to examine the possibility of a wider resort to third party intervention and further strengthen the role of the International Court of Justice. Regional mechanisms for the settlement of disputes should also receive the full attention they deserved.

62. The Twelve remained convinced that priority should be given to the increased use, where necessary, of existing international organs and mechanisms, rather than to the setting up of new bodies and the development of new international instruments, although an exception should be made for questions relating to the environment. In that regard, the Twelve expected the United Nations Conference on Environment and Development in 1992 to contribute to the strengthening of international environmental law.

63. Encouragement of the teaching, study, dissemination and wider appreciation of international law was one of the main purposes of the Decade. The Twelve placed emphasis on teaching, as could be seen from the European Community's reply quoted by the Secretary-General (A/46/372), which indicated that the acceleration of the process of European integration and the establishment of the expanded internal market in 1993 had prompted universities to pay particular attention to the teaching of Community-related subjects, particularly in the field of law. European inter-university cooperation was another important tool for the development of studies in international and Community law. Under the ERASMUS programme, institutions of higher education within the European Community could receive support from the Commission for the establishment of inter-university cooperation programmes, transnational structures that fostered student and teacher mobility and the joint development of teaching programmes and intensive courses. International law was particularly well represented in those programmes, especially in intensive courses of relatively short duration, which allowed institutions to pool their expertise in new and highly specialized fields.

64. The Twelve encouraged the International Law Commission to continue its work, focusing its main contribution in the framework of the Decade on the progressive development of international law and its codification.

65. Mr. SZENASI (Hungary) welcomed the changed orientation and attitude which was perceptible in the field of human rights and which the Secretary-General had reflected in his report on the work of the Organization (A/46/1). It was

(Mr. Szenasi, Hungary)

to be hoped that that trend would continue as the programme for the Decade was implemented.

66. Hungary, which had long been a party to numerous multilateral treaties covering all fields of contemporary international law, was endeavouring to promote acceptance of and respect for the principles of international law. Thus, in 1989, the whole range of norms relating to human rights and fundamental freedoms had been incorporated into the Constitution, and it had been stipulated that measures should be taken, wherever necessary, to harmonize domestic law with international legal obligations. By the end of 1989, furthermore, Hungary had withdrawn all the reservations it had made in respect of multilateral treaties stipulating recognition of the compulsory jurisdiction of the International Court of Justice or of any other method involving a third party in the settlement of disputes. In addition, it had acceded to the Optional Protocol to the International Covenant on Civil and Political Rights, thereby recognizing the competence of the Human Rights Committee to receive and consider complaints from Hungarian citizens who claimed to be victims of a violation of rights set forth in the Covenant. Similar steps had been taken with regard to recognizing the competence of the monitoring bodies established by other treaties for the purpose of verifying compliance by States parties. Lastly, in 1990 Hungary had become a member of the Council of Europe and on that occasion had signed the European Convention for the Protection of Human Rights and Fundamental Freedoms.

67. With regard to the promotion of means and methods for the peaceful settlement of disputes between States, the Hungarian Parliament would consider in the near future the question of recognizing the compulsory jurisdiction of the International Court of Justice. Furthermore, Hungary had decided to contribute also in 1991 to the Secretary-General's Trust Fund to Assist States in the Judicial Settlement of Disputes through the International Court of Justice, as it contributed on a yearly basis to the budget of the Hague Academy of International Law.

68. His delegation welcomed the initiative undertaken to organize informal consultations of the heads of international legal departments in the Ministries of Foreign Affairs of Member States. Those officials were the principal sources of information at the national level regarding the work of the General Assembly and the Sixth Committee on the codification and progressive development of international law and were, at the same time, primarily responsible for the dissemination of information on the ideas and goals of the Decade of International Law.

69. Mr. ELIASSON (Sweden), speaking on behalf of the five Nordic countries, said that the report of the Secretary-General (A/46/372) served as a good basis enabling Member States and the Sixth Committee to make suggestions and recommendations for continuing the Decade of International Law. In fact, it would be of great value to Member States and the Secretariat itself to have a yearly survey of the norm-setting activities in the field of public

(Mr. Eliasson, Sweden)

international law within the international community. The report also gave a good idea of the teaching, training and dissemination of knowledge in the field of international law carried out by many international organizations. He hoped that their activities would be further developed during the Decade. In particular, the Swedish delegation supported the suggestion made by the International Court of Justice to publish in all the official languages the analytical summaries of the Court's judgments and advisory opinions as well as new thematic summaries, even if that had financial implications. Since very few States had as yet reported on their contribution to the implementation of the programme for the first term of the Decade, Sweden urged Member States to take part in the dialogue which was necessary in order to achieve substantive results.

70. In November 1989, the Nordic countries had stressed that the Decade should be based on four essential elements: (a) respect for the rule of law at the national level; (b) respect for the rule of law at the international level; (c) readiness to settle international disputes by peaceful means; and (d) cooperation among States to achieve general agreement on the outcome of the Decade. The focus should essentially be on what could be done at the national level, even though the incorporation of international legal obligations into national law was not always an easy process. Although it would of course be desirable to make further contributions to the codification of international law in the course of the Decade, it was even more imperative to enhance respect for the law in its current state. The Nordic countries therefore reiterated their plea for respect for the rule of law at both the national and international level.

71. The legal departments in the Ministries of Foreign Affairs had an important coordinating role in the implementation of the programme for the Decade at the international level. They could, for example, ensure that the reports prepared by the Secretary-General and all other documentation relating to the Decade were widely disseminated, make law faculties aware of the programme for the Decade and progress made in carrying it out, and promote the holding of conferences or the writing of articles on the Decade. States could also establish national committees to assist in the implementation of the programme of the Decade.

72. Legal departments had the responsibility to see to it that the political decision-makers were aware of their country's undertakings and the legal implications of the decisions that they made, particularly foreign-policy decisions. If there was too great a discrepancy between treaty obligations, on the one hand, and reality, on the other, international law might fall into disrepute. For that reason, States should not ratify conventions until they were convinced that they would fulfil their commitments. In many cases - particularly in the human rights area - commitments were obviously not carried out. It was also necessary to put an end to the practice of ratifying conventions subject to general reservations which subordinated the obligations undertaken to national law and made ratification an illusion. It would be

(Mr. Eliasson, Sweden)

more honest to delay ratification until it was possible to implement the convention under national law. Furthermore, states parties to a treaty should not accept reservations by other parties which were not in conformity with the object and purpose of the treaty. Otherwise, the practice of generally phrased reservations might spread, which would also bring international law into disrepute.

73. The resolution to be adopted on that agenda item should (a) recommend that Member States should ensure the widest possible circulation of the reports contained in document A/46/372, particularly among bodies engaged in legislative work in order to facilitate the coordination of efforts at both the national and international level; (b) request the Secretary-General to update the report before the forty-seventh session of the General Assembly, when a decision on the next term of the Decade was to be taken; and (c) encourage Member States to respond to the Secretary-General's request for information on their contribution to the implementation of the programme for the Decade. Active participation by the non-aligned countries, whose initiative had led to the Decade, in carrying out the programme would be particularly welcome.

74. With regard to the need to promote popular understanding of the role of international law, the Nordic countries proposed that the United Nations Secretariat - and perhaps even the Legal Counsel himself - should write a short text on the Organization and international law, which States could translate into their own languages and use not only in universities but also in secondary schools. The heads of international legal departments in the Ministries of Foreign Affairs of Member States should also be consulted.

75. Lastly, the Nordic countries wished to stress that the Decade need not be spectacular in nature. The best way to enhance respect for international law would be to organize a large number of different activities, essentially at the national level, whose cumulative educational effect would make it possible to achieve the objectives of the Decade.

76. Mr. SUN Lin (China) said that at a time when the establishment of a new international order was giving rise to heated discussion, it was particularly important to strengthen the role of international law.

77. His Government noted with satisfaction that two of the four proposals that it had submitted in 1990 with respect to the activities for the Decade of International Law had been included in the programme adopted by the General Assembly for the first term of the Decade. In order to contribute to the implementation of the programme, China had held in Beijing in August 1991, with the cooperation of the United Nations Environment Programme (UNEP) and other agencies, a symposium on developing countries and international environmental law, attended by 32 experts and scholars from 17 developing and developed countries and from relevant international organizations, including the Executive Director of UNEP, representatives of the United Nations Office

(Mr. Sun Lin, China)

of Legal Affairs and a judge from the International Court of Justice. The discussion had focused on four major issues: (a) common concerns of mankind, including sovereign rights of States, sustainable development, the special needs of developing countries and environmental protection of "global commons"; (b) sharing of burdens on the basis of equity, including the principle of equity, international cooperation, funding and technology transfer; (c) human rights and environmental protection, including the right to a healthy environment, the right to development, the nature of collective human rights, non-discrimination and due process of law; and (d) the settlement of disputes, including institutional arrangements in that field. The final report of the symposium (A/C.6/46/4, annex) contained suggestions on seven aspects which deserved further consideration for the development of international environmental law.

78. Also within the framework of the programme of activities for the first term of the Decade, his Government intended to host a symposium on third-world countries and international law in 1992. The third-world countries, long excluded from the process of formation and development of contemporary international law and victims of certain discriminatory norms, had recently given fresh vitality to international law by participating actively and positively in its development. An in-depth study of their influence in that regard, along with action to encourage the teaching, study, dissemination and wider appreciation of international law in the third-world countries, would undoubtedly help international law play a more positive role in international relations.

79. With regard to the strengthening of the role of the International Court of Justice and means for the peaceful settlement of disputes between States, his Government had proposed encouraging States not only to study the question of recognizing the Court's compulsory jurisdiction by making declarations under Article 36, paragraph 2, of the Statute of the Court, but also to explore other ways of accepting its jurisdiction (special agreements; inclusion of dispute settlement clauses in treaties; referral of cases to an ad hoc chamber or requests for advisory opinions). Concerning the trust fund proposed by the Secretary-General, despite his country's limited financial resources the Government of China had sought to make a contribution to demonstrate its commitment to strengthening the role of the Court. In addition, it was continuing its efforts to advance the consultations with the other permanent members of the Security Council on the agreement on peaceful settlement of disputes by the Court, and was prepared to conduct discussions in that regard with other interested countries on a bilateral or multilateral basis.

80. If a third peace conference was to be held at The Hague at the end of the Decade, it should adopt a declaration on the principles of international law relating to peace and development.

(Mr. Sun Lin, China)

81. Now that a first step had been taken in implementation of the programme of activities for the first term of the Decade, that programme should be continued and the future programme should be formulated in the light of the common interests and needs of the international community so that the Decade would make a tangible contribution to the strengthening of international law and the maintenance of international peace and stability.

82. Mr. AFONSO (Mozambique) resumed the Chair.

83. Mr. AL-BAHARNA (Bahrain) said that the Secretary-General's report (A/46/372) on the item under consideration was most instructive and useful. Since the establishment of the United Nations, a strong impetus had been given to the codification and development of international law, particularly through the work carried out by the International Law Commission. Nevertheless, States had been slow in ratifying or acceding to the conventions emanating from the work of the Commission or agencies of the United Nations family. The proposal to consider the question of treaties which had not achieved wider participation or entered into force after a considerable lapse of time and the circumstances causing that situation (ibid., p. 9, footnote) therefore deserved support. In that regard, it would be useful for the agencies of the United Nations family to follow the example of the International Labour Organisation (ILO) and adopt a procedure whereby the Member States would report periodically on steps they had taken to ratify or accede to multilateral treaties elaborated under the auspices of those agencies. Such a procedure would expedite the acceptance of multilateral treaties by States. Likewise, the United Nations should consider adopting a procedure similar to the one applied by ILO in monitoring the implementation of multilateral treaties concluded under its auspices.

84. Furthermore, while the adoption in the second half of the twentieth century of international instruments in a large number of fields that had not previously been governed by international law was to be welcomed, those developments would have to be made more widely known to States, research institutes and universities, particularly in the developing countries. The agencies of the United Nations family were already endeavouring in various ways to disseminate information on legal developments in their respective fields of competence, but that information did not seem to be reaching the universities of the developing countries to a sufficient extent. His delegation therefore suggested that the United Nations or UNESCO should consider constituting a body of experts to produce a compilation of documents on contemporary developments in the new fields of international law.

85. It was also important to improve the expertise of the developing countries. In that connection, the programme of activities rightly emphasized the need for training in international law for legal professionals, judges and the personnel of ministries of foreign affairs and other ministries. The United Nations Institute for Training and Research, UNESCO, ILO and other international agencies from time to time organized training and refresher

(Mr. Al-Baharna, Bahrain)

courses for such people, but their efforts in that regard were constantly hampered by lack of funds. The suggestion to set up a trust fund for the implementation of the programme for the Decade (ibid., p. 41, footnote) therefore deserved support. The resources of the trust fund could be used to carry out studies and training activities, for which funding could not be ensured solely by very irregular voluntary contributions.

86. His Government was firmly committed to the cause of international law and would contribute, according to its capacity, to the success of the programme of activities for the decade.

AGENDA ITEM 126: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued) (A/C.6/46/L.6/Rev.1)

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/46/L.7)

87. The CHAIRMAN announced that Niger had joined the sponsors of draft resolution A/C.6/46/L.6/Rev.1 and that Mali, Nicaragua and the Niger had joined the sponsors of draft resolution A/C.6/46/L.7.

The meeting rose at 6 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
38th meeting
held on
Friday, 15 November 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 38th MEETING

Chairman: Mr. AFONSO (Mozambique)

CONTENTS

AGENDA ITEM 127: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued)

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 127: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued) (A/46/79, A/46/317-S/22823, A/46/335, 372, 383 and Add.1 and 587; A/C.6/46/4; A/C.6/46/L.8)

1. Mr. MONTES DE OCA (Mexico) said that the observance of international law was a central theme of the Guadalajara Declaration issued by the Heads of State and Government of the Latin American countries, Portugal and Spain, at the conclusion of the first Ibero-American summit (A/46/317). At the national level, Mexico had established a committee of the United Nations Decade of International Law, in accordance with the programme for the Decade and with Economic and Social Council resolution 1988/63; the Committee had four subcommittees, corresponding to the four objectives of the Decade. Coordination between the legal office of the Ministry of Foreign Affairs of Mexico and the academic community, lawyers, public officials from other ministries and the judiciary was under way with a view to encouraging the participation of those sectors in the study of various subjects under consideration in bilateral or multilateral forums and in the negotiation of treaties.

2. His delegation greatly appreciated the informal meetings which had been held by legal advisers from ministries of foreign affairs of Member States of the United Nations; legal advisers, who were in daily contact with national legislation and international law, could provide valuable service to the development of law and the coordination of actions and positions in relevant multilateral forums in the context of the Decade.

3. In accordance with Article 102 of the Charter and with the assistance of the Treaty Section of the Office of Legal Affairs of the United Nations, Mexico had undertaken a broad training programme on the treaty registration process. Having completed that exercise, however, it doubted whether it would be possible for most States to follow its example. An advisory office could perhaps be established to encourage and guide ministries of foreign affairs in fulfilling the obligation imposed by Article 102. In view of the increase in the number of users of treaty registration and information services, the Secretariat should indicate the way in which, in the light of technological innovations, the requirements of Article 102 could be met. It was encouraging to note from the report of the Working Group (A/C.6/46/L.8) that data relating to the status of multilateral treaties was to be transferred to modern software. As to national dissemination, the Ministry of Foreign Affairs of Mexico was considering the possibility of making available to the public a document, previously of restricted circulation, containing a list of the bilateral and multilateral treaties and executive agreements which were in force for Mexico. Mexico was also interested in disseminating at the national level the international treaties deposited with the Secretary-General. Since there was no list in Spanish of the titles of those treaties, his delegation suggested that a multilingual list of those titles should be published.

(Mr. Montes de Oca, Mexico)

Assistance could be offered to States which, because of economic or bureaucratic limitations, had difficulty in ratifying treaties they supported.

4. At the 44th plenary meeting on 8 November 1991, when the Assembly had been considering the report of the International Court of Justice, the Secretary-General had made a statement containing an illuminating explanation of his suggestion that he should be authorized to seek advisory opinions from the International Court of Justice, under carefully predetermined conditions; that statement should be widely circulated to assist Governments. Relevant parts of statements made by representatives of States and individuals with specialized knowledge of the subject could also be assembled and distributed to interested parties, particularly States.

5. His delegation felt that the theme "encouragement of the teaching, study, dissemination and wider appreciation of international law" fell within the context of another item on the Committee's agenda, the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (item 126). That Programme had years of experience in the matter. During the Decade, that Programme was to be considered by the Committee annually, and the same periodicity should be retained after the Decade was over.

6. Mr. LISWANISO (Namibia) said that his Government's commitment to the maintenance of international peace and security was embodied in Namibia's Constitution. It was in the context of that commitment that Namibia, immediately after achieving independence, had become a member of the International Atomic Energy Agency, and had recently decided to accede to the Treaty on the Non-Proliferation of Nuclear Weapons, in accordance with the desire of the Organization of African Unity to ensure that Africa was a nuclear-free zone. It was also considering accession to a number of other existing international conventions.

7. The prominent role played by international law in the decolonization of Namibia could not be overemphasized. For example, in 1966 Liberia and Ethiopia had challenged South Africa's mandate over Namibia at the International Court of Justice, although the Court had decided that the two countries did not have the right to bring the case to the Court. Subsequently, however, the Court had rendered an advisory opinion declaring South Africa's continued presence in Namibia illegal. In 1978, the Security Council had adopted its resolution 435, which had become the internationally accepted plan for the country's independence.

8. The need for States to settle their disputes peacefully, and the role which international law could play in maintaining international peace and security, acquired special importance in the light of an issue which remained of the utmost importance to his delegation, namely that of Walvis Bay and the off-shore islands. The Namibian and South African Governments had commenced negotiations on the reintegration of Walvis Bay and the off-shore islands into

(Mr. Liswaniso, Namibia)

the rest of Namibia on the basis of Security Council resolution 432 (1978). Pending a final solution of the matter, the two Governments had agreed to establish a joint administration for Walvis Bay as an interim measure. To that effect, it had been decided to establish a joint technical committee to advise the two Governments on the functions and structures of such a joint administration. It had also been decided to appoint a joint technical committee to make recommendations on the demarcation of the boundary between the two countries in the middle of the Orange River, in accordance with the principles of international law. South Africa's continued occupation of Walvis Bay and the off-shore islands was an infringement of Namibia's territorial integrity, and hindered his country's development efforts. He therefore called on the international community to ensure that South Africa negotiated in good faith and without undue delay.

9. With regard to the encouragement of the teaching, study, dissemination and wider appreciation of international law, his Government faced enormous challenges in restructuring its educational system, which would include the teaching of international law, a subject which had not been permitted in schools and colleges by the colonial authorities. The Government had itself been conducting law seminars and symposiums since independence, with training and restructuring of the Namibian court system in mind. The holding of such seminars and symposia should be encouraged during the Decade of International Law, since they enabled government legal advisers to deepen their knowledge of international law and strengthened links of friendship and cooperation among countries.

10. Mr. VOICU (Romania) welcomed the increasing interest of Member States in the implementation of the programme for the activities to be commenced during the first term (1990-1992) of the Decade. His country had provided the Secretary-General with a summary description of the specific activities which had taken place in Romania in connection with the Decade. The main such activity had been the drafting of the new Constitution, which was currently at an advanced stage. The draft Constitution stated that Romania maintained and developed with all States peaceful and good-neighbourly relations based on the generally accepted principles and norms of international law. It undertook to carry out fully and faithfully the obligations placed on it by the treaties to which it was a party. Consequently, treaties which Romania had ratified or acceded to in accordance with the law became part of Romanian domestic law. The provisions concerning the rights and freedoms of Romanian citizens would be interpreted and applied in accordance with the Universal Declaration of Human Rights and the other covenants and treaties to which Romania was a party. In the event of a conflict between such agreements and domestic law, priority would be given in every case to the international regulations.

11. During the period 1990-1991, Romania had become a party to a great number of international treaties in many different fields, including the Protocols Additional to the Geneva Conventions of 1949, the International Convention against the Taking of Hostages, and the Convention on the Rights of the

(Mr. Voicu, Romania)

Child. His country had also taken a new position on the use of jurisdictional means to seek a peaceful solution to disputes between States and had begun withdrawing the reservations it had made when signing or ratifying international treaties that stipulated recognition of the compulsory jurisdiction of the International Court of Justice. Such reservations had been withdrawn with respect to a number of treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Political Rights of Women.

12. His delegation welcomed the view, expressed in the report of the Working Group on the Decade (A/C.6/46/L.8, para. 7), that it might be useful to present information on the status of ratifications of and accessions to multilateral treaties deposited with the Secretary-General in such a way as to indicate also the participation of each State in those conventions. It also supported the suggestion that the United Nations should publish similar information on multilateral treaties deposited with other international organizations or States (ibid.).

13. With regard to the encouragement of the progressive development of international law and its codification, his delegation believed that the development of new legal instruments would speed up during the Decade with the completion of the main drafts on which the International Law Commission and UNCITRAL were currently working. In that respect, it supported the proposal made by the Netherlands, on behalf of the European Community, concerning the international legal regulation of questions related to the environment and the protection thereof. Romania also supported the proposal to convene a Congress on international trade law in 1992.

14. Since the Decade of International Law covered the same period as the International Decade for Natural Disaster Reduction, proper coordination of the activities undertaken under the programmes of the two Decades would contribute to the development of international humanitarian law.

15. His delegation supported the General Assembly's recommendations on the acceleration of the ratification of the legal instruments adopted by the United Nations in the field of public and private international law. Special emphasis should be placed on legal instruments relating to the social and humanitarian sphere and to fundamental human rights and freedoms.

16. On the question of preventive diplomacy, Romania considered that the forthcoming adoption of the draft Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security would encourage United Nations bodies to contribute more actively to the development of preventive diplomacy.

17. It was vitally important, in his delegation's view, to encourage the teaching, study, dissemination and wider appreciation of international law with a view to ensuring general respect for its principles and norms. In

(Mr. Voicu, Romania)

Romania, legal studies and research were currently going through a phase of adaptation aimed at reflecting the objectives of the Decade. In 1990-1991, government institutions, in conjunction with non-governmental associations, had organized three series of lectures on international humanitarian law and on human rights and his delegation would like to express its appreciation to the non-governmental organizations which had convened scientific gatherings devoted specifically to the implementation of the programme for the Decade. Their conclusions were valuable for future work at the national and international levels. At the national level, in 1990 and 1991, a number of Romanian non-governmental organizations, including the Association of International Law and International Relations and the United Nations Association of Romania, had sponsored activities such as seminars, round tables and meetings for scientific communications. Lastly, the Romanian Institute for Human Rights had been established and its activities placed under the auspices of Parliament.

18. In 1991, 50 years after the death of the well-known Romanian diplomat and lawyer, Nicolae Titulescu, the European Foundation "Nicolae Titulescu" had been established in Romania. The Foundation aimed to develop and disseminate the legal thinking of Nicolae Titulescu and its first action had been to organize in July 1991 the first in a series of summer courses for young diplomats. His delegation believed that the Decade should also be used to promote awareness of the legal traditions and contributions of different nations and of personalities, such as Nicolae Titulescu, who had played an active and fruitful role in the codification and progressive development of international law. Nicolae Titulescu had declared that it was only when politics, and law became one and the same and when the imperative of the law was accepted as part and parcel of freedom, that mankind could be saved.

19. In accordance with the recommendations of the programme for the activities to be commenced during the first term of the Decade, a National Committee for the Decade had been created in Romania, under the presidency of the Minister for Foreign Affairs, to coordinate activities throughout the Decade. The Committee comprised representatives of Parliament, the Ministry of Justice, and the academic community. His delegation hoped that it would be able to report to the Committee in 1992 on the activities undertaken under the guidance of the National Committee. It remained convinced that the successful implementation of the aims of the Decade would be a significant step towards establishing the primacy of international law in relations between States.

20. Mr. SEVILLA (Nicaragua) said that his Government had welcomed the declaration of the period 1990-1999 as the United Nations Decade of International Law; respect for and promotion of international law were fundamental pillars of Nicaragua's foreign policy. All Member States must make efforts to improve the resources available to international law for the peaceful settlement of disputes between States, and in particular to strengthen the International Court of Justice. The attainment of the objectives of the Decade would facilitate the resolution of conflicts or

(Mr. Sevilla, Nicaragua)

disputes in various parts of the world and thus contribute to the consolidation of world peace and the promotion of democracy and development.

21. Over the past year Nicaragua had ratified the Convention on the Rights of the Child. It had recognized the compulsory jurisdiction of the Inter-American Court of Human Rights and had concluded a headquarters agreement for a Central American tourism office which was to be established in Nicaragua. Nicaragua believed that it was important for States to incorporate international law as part of domestic law and to ensure that it was applied by their courts. The Political Constitution of Nicaragua, in article 46, established that all persons in the national territory enjoyed to the full the rights laid down in the various instruments adopted at the world and regional levels; the various conventions, covenants and declarations were listed in that text.

22. Ecological problems were critical for the future of the planet; States must redouble their efforts to adopt international regulations in respect of the environment and its impact on development. With regard to part II of the programme, set forth in the annex to General Assembly resolution 45/40, Nicaragua reiterated its view that disputes between States must be settled in a peaceful and negotiated manner. The strengthening of the International Court of Justice should be one of the most important activities of the Decade, bearing in mind that international justice was based on the consent of States. Nicaragua endorsed the view that the submission of cases to the Court must be encouraged so that international law would be regarded as routinely applicable in international society and not as a procedure resorted to only in cases of crisis or serious conflicts.

23. His delegation's views on the Decade had been outlined in document A/45/430/Add.2. It believed that the question of an international convention on the peaceful settlement of disputes among States should be considered by the Sixth Committee and the International Law Commission so that a convention could enter into force before the end of the Decade. It also felt that the United Nations University, the University for Peace and other similar institutions should promote activities at the regional, subregional and national levels to help identify potential international trouble spots and to apply the most appropriate procedures and mechanisms for resolving disputes by peaceful means. The progressive development and codification of international law must be actively promoted during the Decade. The United Nations should sponsor conferences, meetings and seminars on international law at the regional, subregional and national levels so as to promote awareness of the importance of law in general and international law in particular.

24. In connection with part IV Nicaragua in October 1991 had held an important seminar on international relations which had emphasized the importance of the dissemination of international law, especially in order to facilitate the signing of bilateral and multilateral agreements involving the initiative of the Americas and cooperation with the European Community. In

(Mr. Sevilla, Nicaragua)

view of the importance of humanitarian questions in Nicaragua as a result of the upheavals during the 1980s, the International Committee of the Red Cross had held a course on international humanitarian law for police and prison authorities, sponsored by the Nicaraguan Government. In Nicaragua, the Central American University organized programmes relating to human rights in cooperation with the Institute of Ibero-American Cooperation and the Complutense University of Madrid. A chair of international humanitarian law had been established and a cooperation agreement had been signed with the Inter-American Institute of Human Rights. A Nicaraguan Committee for the United Nations Decade of International Law would soon be established. Advanced courses in international law were given at Nicaraguan universities, and a new university was expected to be established in 1992 which would offer a course of studies leading to a degree in human rights. New school textbooks included information on the Convention on the Rights of the Child and about human rights and international and regional agreements on the subject. That education would help improve Nicaraguan society and democratic institutions and abolish for all time the culture of violence.

25. The President of Nicaragua, along with other Presidents from Central America, had signed the 1990 Declaration of Puntarenas which referred, inter alia, to the conclusion of international conventions on the environment and to the full implementation of human rights. In the Declaration of Antigua, Guatemala, of June 1990, the Central American Presidents had reiterated their desire to establish mechanisms for the peaceful settlement of disputes among States of the region and in the Declaration of San Salvador of July 1991, they had agreed on the need for effective application of international law. The Guadalajara Declaration, adopted at the first Ibero-American summit in July 1991 stressed the importance of strict adherence to the basic rules of international law and of the progressive development of law in new areas as a result of the processes of integration and globalization (A/46/317, para. 23).

26. Mr. VAN DE VELDE (Netherlands) said the events of the past twelve months had shown that many issues covered by the Decade of International Law were of the utmost importance to the proper functioning of the United Nations in maintaining international peace and security. First and foremost in that respect was the peaceful settlement of disputes between States. Replies from Member States and international organizations in connection with the Decade had indicated that it would be preferable to review and strengthen existing institutions and mechanisms for the peaceful settlement of disputes, on both a world-wide and a regional level, rather than to introduce new texts, instruments or mechanisms.

27. The International Court of Justice, the principle judicial body of the United Nations, could contribute to the success of the Decade in more ways than one. The Court was not only of eminent importance with respect to the peaceful settlement of disputes between States, but also played a major role in the process of determining and forming positive international law, as reflected in its decisions and advisory opinions, which constituted an

(Mr. Van De Velde, Netherlands)

important source of international law and were basic materials for those working in that field. His country noted with satisfaction that the number of States accepting the Court's compulsory jurisdiction was growing. It was, however, regrettable that there remained many countries unable to do so. His delegation would be interested in seeking the views of other Member States on factors and difficulties they encountered when considering recognizing the jurisdiction of the Court on a compulsory basis or, alternatively, on an ad hoc basis. Such communications would then form the basis on which generally acceptable recommendations could be formulated for removing existing obstacles to recourse to the Court as part of the process of the peaceful settlement of disputes.

28. The Netherlands would also favour wider use of the advisory opinions provided by the Court at the request of those institutions competent to make such a request. According to Article 96 of the Charter of the United Nations, competence to request an advisory opinion was not limited to the General Assembly and the Security Council, and organs of the United Nations and specialized agencies authorized by the General Assembly could also do so. He hoped that such institutions would make full use of their right to make such requests when appropriate. His delegation agreed with the view that the Secretary-General should also be entrusted with competence to request advisory opinions, thus strengthening his role and contributing to a further development of international law.

29. The initiative of the Secretary-General in establishing a Trust Fund for the International Court of Justice was to be applauded. The Netherlands had decided to contribute 50,000 guilders to the Fund and hoped that additional contributions would be contemplated by States which were not already contributors.

30. His delegation expressed its support for strengthening the role of the Permanent Court of Arbitration. One possible way of enhancing the role of the Court would be to involve it in conciliation processes, either on the basis of its own procedures or, where appropriate, in connection with the application of rules of conciliation such as those introduced by Guatemala, which were currently under discussion in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and in the Sixth Committee.

31. An important factor in the peaceful settlement of disputes was the establishment of the relevant facts relating to a conflict, since a substantial degree of misunderstanding was often present. That could be remedied by recourse to fact-finding mechanisms, thereby increasing the possibility of a peaceful settlement. In that connection, he stressed the importance of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security.

(Mr. Van De Velde, Netherlands)

32. In addition to mechanisms and instruments for the peaceful settlement of disputes on a world-wide level, attention should also be paid to those operating at the regional level. In his delegation's opinion, it was often preferable to seek the solution of disputes through regional mechanisms, a principle recognized in Article 52 of the Charter. Reference could also be made to developments within the Conference on Security and Cooperation in Europe, the Council of Europe, the Organization of American States, the European Community and other international organizations. Within the Council of Europe his country had proposed that a publication should be prepared on State practice in the field of international law by the Council's member States. The publication should include a compilation of material reflecting the positions of the States concerned with regard to international legal relations and situations. Other regional organizations might consider a similar initiative. It also favoured the publication of a United Nations manual on international law. The Legal Counsel might be invited to present his views on the desirability of such an initiative and on the possibility that he might himself act as a coordinator in close cooperation with the secretariat of the Sixth Committee.

33. Another important subject which should receive ample attention during the Decade of International Law was the teaching, study, dissemination and wider appreciation of international law, since the participation of universities and other educational and academic institutions in the proposed activities of the Decade was of essential importance if the goals of the Decade were to be attained. In that connection, mention should be made of a special issue of the Leiden Journal of International Law devoted to the Decade and bearing the subtitle "Reflections on dispute-settlement". The Ministry of Foreign Affairs, in close cooperation with the Ministry of Education, was reviewing means and methods of promoting awareness of international law.

34. As he had pointed out earlier, his delegation was cautious in its approach to the creation of new legal obligations in fields where obligations already existed. If certain international instruments had attracted only a limited number of signatures, ratifications or accessions, the reasons for that situation should be determined. An exception could be made for new standards in fields where legal gaps existed, such as environmental law.

35. His delegation agreed with the view that the International Law Commission could make a vital contribution to the Decade by completing its work on the topics currently on its agenda. To do so, the Commission should have at its disposal procedures and working methods which would make it possible to respond rapidly and effectively to requests for advice. That might require intersessional activities and further modifications of working methods. Although caution should be exercised in the selection of new topics, his delegation was convinced that it was most important that the pressing needs of the international community in the last decade of the century should be taken into account. Possible new topics should be of a practical nature and susceptible of being dealt with over a few years.

(Mr. Van De Velde, Netherlands)

36. In conclusion, his delegation wished to re-emphasize its commitment to the goals of the Decade, and expressed the hope that substantial progress in implementing the programme of activities of the Decade would have been made by the Committee's next session.

37. Mr. KORZATCHENKO (Ukraine) said that adherence to the fundamental principles and norms of international law, and enhancement of their effectiveness, were a determining factor in establishing a new world order and peaceful relations between States on a basis of partnership.

38. At a time of major changes in the political life of Ukraine, and the gradual evolution of the Republic towards the establishment of a legally-constituted State, it was natural that his delegation should find itself in accord with the aims of the United Nations Decade of International Law, and that it should support the programme of action for the Decade, which was intended to strengthen the security of States and to ensure justice and the rule of law in international relations.

39. The Declaration on the State sovereignty of Ukraine adopted by the Parliament of the Republic also played its part in ensuring greater participation by Ukraine in achieving the aims of the Decade. In particular, Ukraine intended to participate actively as a full-fledged member of the international community in the pan-European process represented by the Conference on Security and Cooperation in Europe. The first steps in that direction had already been taken, and Ukraine hoped to activate the process after confirmation of the Act proclaiming the country's independence by means of the referendum to be held on 1 December 1991. In that connection, it was of the utmost importance to establish reliable machinery for implementing treaties concluded by Ukraine and to establish cooperation with the international human rights monitoring bodies: his country attached great significance to all human rights, which it believed constituted the cornerstone of a State based on the rule of law.

40. Ukraine was currently taking concrete measures to bring its domestic legislation into line with international norms and to ensure consistent compliance with obligations arising from international treaties and agreements to which it was a party.

41. Ukraine also supported efforts within the context of the Decade of International Law to enhance the procedures for peaceful settlement of disputes between States, including resort to the International Court of Justice and full compliance with its decisions. In that connection it believed that particular attention should be paid to the settlement of disputes relating to transboundary environmental pollution and measures to prevent it. Having experienced the tragedy of Chernobyl, Ukraine had a special interest in the progressive development and codification of international environmental law, and recognized the need to establish reliable safeguards for ecological human rights.

(Mr. Korzatchenko, Ukraine)

42. Ukraine took a serious interest in matters relating to the teaching, study and dissemination of international law and in the provision of assistance to developing countries whose citizens were studying in Ukraine. In that respect, a major role was played by the Ukrainian Institute of International Relations and International Law, which formed part of Kiev State University. Consideration was currently being given to opening an international information centre on human rights in Ukraine: that represented only one aspect of a broad proposed programme of cooperation with the United Nations.

43. Mrs. FLORES (Uruguay), speaking on behalf of the delegations of Bolivia, Brazil, Colombia, Costa Rica, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay and Venezuela, as well as her own, said that with regard to promotion of the acceptance of and respect for the principles of international law in the Latin American context, it would be useful to establish a data bank on multilateral and bilateral treaties to which governmental and non-governmental bodies and individuals would have access. There should also be periodic regional meetings to consider questions related to treaties so as to coordinate positions, eliminate objections to specific instruments and increase international legal cooperation. Publications on treaties in force in the various States could be exchanged. The Secretariat should publish a multilingual list of titles of treaties deposited with the Secretary-General. Groups of experts from regional bodies should be established to provide technical assistance in the process of formulating instruments. Publications on treaties in force should include a reference to the practice followed by States with regard to those treaties and their application in specific cases.

44. With regard to the second objective of programme for the Decade, it was a tradition in the Latin American countries for conflicts to be resolved peacefully; if that could not be achieved through non-juridical means, it was essential to apply juridical methods and to have resort to the Permanent Court of Arbitration and especially to the International Court of Justice, whose role should be strengthened. Mechanisms must be established to ensure that decisions of juridical bodies were enforced. It would be very useful to have a universal convention on the peaceful settlement of disputes which could be applied in all cases in which the various legal instruments had not envisaged mechanisms. The delegations she represented fully supported the Secretary-General's proposal that he should be empowered to seek advisory opinions from the International Court of Justice, in exercise of his good offices and with the consent of the parties.

45. With regard to the third objective, the Special Committee on the Charter of the United Nations and on the strengthening of the role of the Organization should take up certain aspects linked with the maintenance of international peace and security. It was important for the individual to be recognized as a subject of international law, without prejudice to the sovereignty of States. Environmental law was a particularly appropriate area for the progressive

(Mrs. Flores, Uruguay)

development and codification of international law, taking the question of development into account. Consideration should be given to the elaboration of procedural norms and regulations for the Sixth Committee; a publication on the practice followed in the Committee would be useful for future members.

46. Turning to the fourth objective of the programme for the Decade, it was of vital importance to educate people from an early age and to include basic concepts of international law at the primary and secondary levels. The cooperation of international and regional bodies in implementing programmes of study was very important. The media played a vital role in the area of dissemination. The organization of seminars, courses, lectures and symposia on the subject of international law and subsequent publication of their conclusions was also an important activity. Funds allocated to certain fellowships should be used to organize national courses. It was encouraging that the Secretariat had indicated that it would be possible to publish in all official languages the summaries of the judgments and advisory opinions of the Internationl Court of Justice; that should be without prejudice to the possibility of setting up a voluntary fund to finance the full translation of that material. The idea of assigning implementation and coordination of the fourth objective of the programme for the Decade to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was an interesting possibility.

47. Three national committees had been established for the implementation of activities under the Decade, two of which were in Latin America. One was in Mexico, and the other in Uruguay. The Uruguayan national committee had been established in March 1991 and consisted of representatives from the Ministries of Foreign Affairs, Education and Culture, the universities and the legislative and judicial branches. Venezuela was establishing a national committee in order to plan activities related to the promotion and dissemination of international law.

48. Mr. BELLOUKI (Morocco), speaking also on behalf of the States members of the Arab Maghreb Union, said that the Union, established by the 1989 Treaty of Marrakesh, constituted a step towards broader unity encompassing other Arab and African States. At its meeting held at Casablanca in September 1991, the Presidential Council had expressed the Union's readiness, as an integral part of the African community, for fraternal and effective cooperation with African regional groupings and for dialogue with the European Economic Community and other groupings.

49. The United Nations Decade of International Law would provide an appropriate opportunity to narrow the gap between international law and the needs of members of the international community at every stage of development. The developing countries must be enabled to contribute to the enrichment of international law, particularly since the new situation in the world required that international law should play an important role. The interests of the developing countries must be reflected in the rules of international law if their acceptance was to be ensured.

(Mr. Bellouki, Morocco)

50. Promotion of the acceptance of and respect for the principles of international law was an important goal. The Maghreb countries, as parties to many international agreements, were aware of their obligations as responsible members of the international community. In their view, all States must participate in the elaboration of multilateral agreements, particularly those that governed complex aspects of international life. As suggested in the report of the Working Group on the Decade (A/C.6/46/L.8, para. 7) the United Nations Secretariat should publish the status of ratifications of and accessions to multilateral treaties deposited with other international organizations or States. The Maghreb countries were pleased with the efforts being made to publish the monthly Statement of treaties and international agreements registered or filed and recorded with the Secretariat within three to five months from the date of registration rather than the current 10 months.

51. The promotion of means and methods for the peaceful settlement of disputes between States should remain a focus of the programme for the United Nations Decade of International Law. There was always a need to inculcate awareness of the need for resort to peaceful means in the settlement of disputes and to strive to create a culture of peaceful settlement in international relations based on the supremacy of the law and respect for the principles of justice and fairness. The Maghreb countries expressed their satisfaction at the completion of work on the Handbook on the peaceful settlement of disputes between States, which would prove an acceptable basis for the elaboration of an international convention in that regard.

52. With regard to the question of resort to and full respect for the International Court of Justice, the Maghreb countries felt that non-judicial means should be sought before resort was had to the Court, and the freedom of parties to a dispute to choose an appropriate peaceful means for its resolution should be respected. The proposal by the Secretary-General that he be granted the authority to request an advisory opinion from the Court deserved serious consideration.

53. The Arab Maghreb Union had established a tribunal composed of two judges from each State to consider disputes arising out of the interpretation and application of the Treaty establishing the Union and the agreements concluded within it, as referred to it by the Presidential Council or one of the parties to the dispute, or in accordance with its own statute, and its judgements would be binding and final. It also provided advisory opinions on legal matters referred to it by the Presidential Council. A ministerial committee of the Union was currently meeting in Mauritania to consider a number of legal questions, including the standardization of legal systems and the establishment of a Maghreb centre for arbitration in commercial matters.

54. In the context of encouraging the progressive development of international law and its codification, attention must be paid to areas of advantage to all and particularly those which promoted the development of the developing countries. The Maghreb countries had noted from the report of the

(Mr. Bellouki, Morocco)

Secretary-General (A/46/372) the rapid pace of the development and codification of international law within the United Nations framework. In order to coordinate the efforts being made by the United Nations and the specialized agencies, information that was updated and supplemented on an annual basis must be disseminated in a systematic manner to Member States and to the relevant institutions.

55. For the encouragement of the teaching, study, dissemination and wider appreciation of international law, a greater number of seminars should be held in the framework of the United Nations Programme of Assistance. The Secretariat was making commendable efforts for the timely appearance of the United Nations Juridical Yearbook, the accelerated publication of the United Nations Treaty Series and the translation of the summaries of the judgments and advisory opinions of the International Court of Justice into all the official languages. It had also made commendable efforts to facilitate access to information on treaties.

56. The Maghreb countries considered that the guidelines for the execution of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, as contained in document A/46/610, would lend great impetus to the activities of the Decade in that domain. They further expressed the desire that their nationals should participate in the seminars held during the sessions of the International Law Commission and that they should benefit from the United Nations-UNITAR Fellowship Programme in International Law. The principles of equitable geographical distribution and of rotation should be observed in the provision of fellowships, and candidates from the same country should not participate in successive seminars.

57. Cooperation between developed and developing countries, and particularly between their educational institutions and legal experts, was of the utmost importance. International law: achievements and prospects, recently published by UNESCO, was one of the most important contributions that had been made by that organization to the Decade, given that it addressed the subject with due regard to the variety of contemporary legal cultures and practitioners of international law. The balance between theory and practice in international law should not be lost. The Decade should stress that rules of international law were rules of general application in which all countries, particularly the weaker ones, could find protection without selectivity or the adoption of double standards. There should be no insistence on the application of principles on which there was no consensus in the international community and which lacked any legal support, such as the right of interference and the duty of interference, particularly when such principles were in conflict with peremptory norms.

(Mr. Bellouki, Morocco)

58. The Maghreb countries were endeavouring to elaborate a legal system that would be applied by each of them at the domestic level, and to establish close diplomatic cooperation with each other on the basis of dialogue. They were also endeavouring, together with the international community, to establish an international system ruled by justice, dignity, freedom and human rights and characterized by friendly cooperation and mutual respect.

59. Mr. PAZARCI (Turkey), referring to the report of the Working Group on the United Nations Decade of International Law (A/C.6/46/L.8), said that his delegation welcomed the information in paragraph 7 of the report concerning Secretariat activities in connection with multilateral treaties. However, those activities, highly satisfactory as they were, could not produce the desired effect unless they were supplemented by measures taken by Member States at the national level. States should be helped to strengthen their systems for filing treaties so that they might record all useful data relating to treaties to which they were parties and also have access to data on other treaties to which they were not parties. National efforts in that field were quite as necessary as United Nations activities. Accordingly, his delegation wished to suggest that a model of a national treaty registration system should be prepared on the basis of the experience of developed countries already in possession of such systems and should be proposed to Member States for their use, bearing in mind the specific requirements of developing States. The model should lend itself both to conventional methods and to up-to-date data processing techniques, and should incorporate direct access to data supplied by the United Nations Secretariat system. He hoped that his suggestion would be taken into consideration in future work on the Decade.

60. Referring to paragraph 8 of the report, he noted that the Secretary-General's proposal that he be granted the authority to request an advisory opinion from the International Court of Justice had given rise to divergent views. Mindful of the difficulties involved in remodelling a mechanism already in existence, his delegation took the view that the idea should be approached with great circumspection. In conclusion, he expressed appreciation of the work being done by the Secretariat to verify and modernize the United Nations Treaty Information System.

61. Mr. IBRAHIM AHMED (Yemen) said that the declaration of the period 1990-1999 as the United Nations Decade of International Law had been an expression of the great interest of countries in the application of the concept of the rule of law to international relations and had lent new support to the work of the international bodies concerned with the progressive development of international law.

62. Yemen expressed its support for the programme for the activities to be commenced during the first term (1990-1992) of the Decade. Its Ministry of Foreign Affairs had prepared a programme of activities to be undertaken during that period which had been circulated to the ministries concerned, educational institutions and non-governmental organizations interested in the subject in order to elicit their views and proposals.

(Mr. Ibrahim Ahmed, Yemen)

63. Throughout the stages of its development, Yemen had expressed its respect for the principles of law as the basis of its relations with other countries, and it hoped that the Decade would enhance the role of international law, promote the maintenance of international peace and security and guarantee the legitimate rights of peoples and States. That approach was reflected in the country's Constitution, which had been adopted following a plebiscite held in May 1991. Yemen was a party to a large number of international agreements, including 15 in the field of human rights alone; it had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment earlier in 1991, and it was currently studying a number of treaties with a view to acceding to them. The Government reviewed on a periodic basis the international agreements to which Yemen was a party in order to determine the extent to which the country was meeting its obligations under them, and the Decade would provide it with a suitable opportunity to re-examine some of the reservations that it had expressed in the past. To ensure the implementation of multilateral conventions, Yemen adopted the necessary legislative, judicial and administrative measures, and that was abundantly clear from the new laws enacted in 1991, including a political parties Act, a press Act, a diplomatic corps Act and an Act on territorial waters, the economic zone and the continental shelf, all of which reflected many of the rules of international law contained in multilateral conventions.

64. Yemen welcomed the completion of the Handbook on the peaceful settlement of disputes between States and considered it to be an appreciable contribution to the Decade. There was a need to strengthen the role of United Nations organs, including the International Court of Justice, in the peaceful settlement of disputes without, at the same time, diminishing the importance of such means as arbitration and cooperation between regional organizations and the United Nations. His delegation would welcome the adoption of any international instrument on the peaceful settlement of disputes between States that laid down rules that were the subject of a consensus of all States.

65. His delegation commended the progress made by the International Law Commission in the progressive development and codification of international law and stressed the particular importance of developing international norms relating to environmental protection, particularly in times of armed conflict. In the context of the encouragement of the teaching, study, dissemination and wider appreciation of international law, in Yemen international law was studied as a specialization in the faculties of law and in a general manner in other faculties. Preparations were being made for the opening of a diplomatic institute for the training for Yemeni personnel, and that institute would no doubt be one of the major centres for the teaching and dissemination of international law in Yemen. Like other developing countries, Yemen required assistance from industrialized countries and international organizations in that regard, particularly for the acquisition of legal reference works, access to international lawyers as lecturers and the provision of fellowships for those specializing in international law. His delegation welcomed the fact that it would be possible to translate into all

(Mr. Ibrahim Ahmed, Yemen)

the official languages of the United Nations the summaries of the judgments and advisory opinions of the International Court of Justice for the period 1949 to 1990 so that they might be used in universities and other research centres.

66. The sincere cooperation of States in achieving the goals of the Decade would enable mankind to greet the twenty-first century with a new world based on respect for law in which peace and justice prevailed.

67. Mr. MICKIEWICZ (Poland) said that the three areas which should be given priority during the current and following terms of the Decade were, first, peaceful settlement of disputes, second, application of international law at the national level, and, third, legal aspects of environmental protection. The radical political changes which had taken place in recent years, particularly in Central and Eastern Europe, gave ground to believe that confrontation between States was giving way to a new era of cooperation, rule of law and peaceful settlement of possible disputes. His delegation therefore welcomed the fact that one of the main purposes of the Decade was to be the promotion of means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice. Poland had, two years previously, accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute. Acceptance of that optional clause by an increasing number of States was an essential element in strengthening the rule of law in conflict situations. Prevention and settlement of international disputes were areas of international law well suited for progressive development during the Decade. The draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security annexed to draft resolution A/C.6/46/L.9 would undoubtedly make a valuable contribution to the Decade, and he expressed the hope that the Declaration would be adopted by consensus.

68. With regard to the question of the implementation of international law in both the national and international spheres, he recalled the comment made by his country's Minister for Foreign Affairs earlier in the session to the effect that many countries could benefit from more extensive and systematic information on possible approaches to the problem of domestic implementation of international law, and that the Decade should be used to bring about progress in that field. In the light of those remarks, his delegation welcomed point III.7 in the list of comprehensive suggestions in the report to the programme for the Decade (A/C.6/45/L.5, annex II), which concerned the evaluation of the future role of international law in the context of an interdependent and changing world, including the evolving relationship between international law and national laws.

69. The third priority area he was proposing, that of legal regulation of environmental protection, was also of paramount importance. In view of the accelerating deterioration of the global environment and the threats facing

(Mr. Mickiewicz, Poland)

mankind in connection with transboundary air, water and land pollution, inter alia, in areas outside national jurisdiction, there was a dramatic need for legal rules dealing with liability in such matters. In that connection, he referred to the preparations being made for the forthcoming United Nations Conference on Environment and Development and the start of negotiations on climate change, protection of biological diversity and management of tropical forests.

70. In conclusion, he said that the programme for the first term of the Decade had been received very favourably in his country. The Minister for Foreign Affairs had forwarded the text of General Assembly resolution 45/40 and the annex thereto to the Polish branch of the International Law Association and to all universities and other educational establishments where public international law was taught, encouraging them to promote the purposes of the Decade within the fields of their scientific or educational activities. It should be noted that during the academic year 1990 some 30 doctoral theses and 200 Master of Laws degree theses at Polish universities had been devoted to various aspects of international law.

71. Mr. APRIL (Canada) reiterated his Government's support of the main purposes of the United Nations Decade of International Law as set forth in General Assembly resolution 44/23 and its hope that the activities undertaken during the first term of the Decade would be successful.

72. So far as the promotion of means and methods for the peaceful settlement of disputes between States was concerned, his Government took the view that resort to international bodies, including not only the International Court of Justice but also regional organizations such as the Conference on Security and Cooperation in Europe and the Organization of American States, was of the essence.

73. As previously stated, Canada considered that faithful implementation of legal instruments and rules already in existence, especially in the crucial spheres of human rights and environmental protection, would be more conducive to the further advancement of international law than the elaboration of new agreements or the setting up of new institutions.

74. The International Law Commission should be encouraged to continue its work of codification and progressive development of international law. The Decade provided an excellent opportunity for the Commission to make a valuable contribution to the advancement of international law by completing its work on certain items which had been on its agenda for a number of years, especially those with a bearing on environmental problems. Referring to the General Assembly's recent election of members of the International Law Commission, he extended his delegation's congratulations to all those elected and, in particular, to the 17 new members of the Commission.

(Mr. April, Canada)

75. Like the Nordic countries on whose behalf a most interesting statement had been made by the Swedish delegation, Canada encouraged the implementation of the Decade's objectives at the national level. A number of meetings and lectures had been organized with a view to enhancing the population's awareness of the Decade and its purposes. New teaching materials for use at universities were in preparation, and basic principles of international law were to be taught at secondary and even at primary schools. Several institutions already offered courses on human rights and hoped to take advantage of the opportunities offered by the Decade to extend their teaching activities to other areas of international law. Seminars on international law were held for journalists working in the field of international affairs. As part of the effort to sensitize public opinion to the importance of international law, consultations were being held with film directors, television producers, announcers and others who came regularly into contact with the public at large. Lastly, he wished to mention a private professional organization known as the World Network for International Law which had been set up in his country specifically for the purpose of promoting the United Nations Decade of International Law. The new group, which intended shortly to begin issuing an information circular for the benefit of similar groups in other countries, pursued two objectives, the first of which was to share available information on activities organized in different countries within the framework of the Decade and the second was the publication and dissemination of legal studies received inter alia from international organizations. The first issue of the circular was expected to appear in January 1992.

76. Mr. MOREIRA LIMA (Brazil) said that the most important contribution a country could make to the Decade was its own record of scrupulously observing the principles and norms of international law. The Brazilian Government was taking specific measures to enhance its contribution to the Decade, especially through the encouragement of the teaching, study, dissemination and wider appreciation of international law. In 1991, the Ministry of Foreign Affairs of Brazil had adopted its own internal programme for the Decade, which included the establishment of a course in international law for members of the congressional staff. The Ministry was also considering promoting the publication of works on international law by the United Nations as well as by Brazilian authors, to be distributed to universities and other institutions in Brazil as well as to interested foreign institutions and to the Governments of other Portuguese-speaking countries. The programme adopted by the Ministry also provided for the resumption of the activities of the National Committee for the Codification of International Law in order to promote the objectives of the Decade through the organization of seminars, symposia, lectures and meetings to exchange experiences and to provide assistance in the field of international law. Also of significance was the document on international law, prepared by Brazil, Mexico and Spain and circulated during the Ibero-American Summit held at Guadalajara, Mexico, in 1991, which made specific reference to the Decade and suggested that the Summit should urge participants to contribute to the Decade by identifying areas which would be suitable for progressive development and codification.

(Mr. Moreira Lima, Brazil)

77. His delegation saw clear merit in the suggestion by the Secretary-General that the General Assembly should extend to him the authority to request, with the consent of the parties to disputes, advisory opinions from the International Court of Justice, under Article 96 of the Charter, as an important way of developing international law. He shared the view of the delegations of Mexico and Spain that the question should be examined during the following session of the Special Committee on the Charter.

78. There was a new and growing conviction among States that in a highly interdependent world, the interests of all were best served by a more principled and orderly international system based on the rule of law. Recent events had demonstrated the need for a world order based on better relations among nations, full compliance with international legal obligations and wider respect for the rule of law. His delegation hoped that the Decade would effectively help to promote universal respect for the norms and principles of international law, a better understanding of the role of the United Nations in maintaining international peace and security and in promoting economic and social development, and the further progressive development and codification of international law.

79. Ms. KOFLER (Austria) reiterated her delegation's conviction that greater awareness on the part of States of the importance for international law and its progressive development and codification was essential to international peace and security. The Decade of International Law provided a unique opportunity to promote and enhance the cause of peace by strengthening the supremacy of the rule of law and increasing the willingness of States to abide by the norms of international law.

80. The fact that only a few Governments had thus far responded to the Secretary-General's invitation to submit information on the implementation of the programme for the activities to be commenced during the first term of the Decade (document A/46/372), might be interpreted to mean that the Decade, in its second year, was losing momentum. Her delegation associated itself with the Swedish representative who, speaking on behalf of the Nordic countries, had urged States to take part in the dialogue needed in order to bring about substantive results. As a forum for such a dialogue, the Sixth Committee bore a particular responsibility for enhancing and promoting the purposes of the Decade and closely monitoring the implementation of its programme. The Committee and, more particularly, its Working Group should continue to serve as a steering body in all matters relating to the Decade with a view to developing generally acceptable recommendations. In that connection, she wished to underline once again that in her delegation's view it was particularly important that decisions relating to the Decade, requiring as they did the full and wholehearted support of all sectors of the international community, should be reached by consensus.

81. Referring specifically to the programme of activities for the first term of the Decade contained in the annex to General Asssembly resolution 45/40, she said that, since her Government's written reply to the Secretary-General's

(Ms. Kofler, Austria)

request was incorporated in document A/46/372, she proposed to confine herself to some brief comments on a part of the programme which her delegation considered to be of the utmost importance, namely, the promotion of means and methods for the peaceful settlement of disputes between States. Increasing acceptance of the supremacy of law in international relations went hand in hand with the establishment and promotion of mechanisms for the peaceful settlement of international disputes, which called for the recognition of a competent international body to deal with cases where States could not agree on the interpretation or application of a rule of international law. Austria welcomed the recent trend which indicated that more and more States were ready to accept the compulsory jurisdiction of the International Court of Justice. Her delegation also considered that all proposals aimed at enhancing the role of the Court, such as the proposal of the Secretary-General that he be granted the authority to request advisory opinions, deserved further consideration.

82. With regard to the promotion of peaceful settlement of disputes, her delegation would wish to see special emphasis placed on those areas where differences between States were most likely to occur in the future. One such area would be that of the environment; work being undertaken in other forums, e.g. in preparation for the forthcoming United Nations Conference on Environment and Development, should be taken into consideration in that connection. International environmental law in general seemed to be an area of international law particularly requiring progressive development. The development of international norms relating to environmental protection would, as other delegations had suggested in the course of the debate, be a most suitable subject for study in the framework of the Decade.

83. Mr. FARRUKH (Pakistan) said that his country fully supported the main purposes of the Decade as set forth in General Assembly resolution 44/28. The report of the Secretary-General (A/46/372) had provided a basis for the discussion in the Working Group on the implementation of the programme for the activities to be commenced during the first term (1990-1992) of the Decade; it also contained useful information on United Nations activities relevant to the codification and progressive development of international law.

84. His delegation noted with interest the activities undertaken by States and international organizations to promote the acceptance of and respect for the principles of international law and felt that the international climate had never been more conducive to that endeavour. It was to be hoped that the Decade would provide an opportunity to enhance the rule of law in international relations.

85. With regard to the promotion of means and methods for the peaceful settlement of disputes between States, he said that the principle of peaceful settlement was the cornerstone of Pakistan's foreign policy. His delegation believed that the International Court of Justice should be resorted to more often and noted with satisfaction that a greater understanding of the Court's useful role now existed among States. For the past few years, there had been

(Mr. Farrukh, Pakistan)

an increasing number of cases for adjudication pending before the Court, and more and more States had accepted the Court's compulsory jurisdiction. In that connection, the initiative taken by the Secretary-General in 1989 to set up a Trust Fund to assist developing countries with their litigation expenses would encourage States to resolve their disputes through the Court. To date, the Fund had received contributions from some 30 countries and had begun to operate.

86. As to the teaching, study, dissemination and wider appreciation of international law, his delegation believed that special emphasis should be placed on encouraging the establishment of academic and professional institutions carrying out research and education in international law in the developing countries, where there was certainly a need for greater public understanding of international law. The organizations of the United Nations system and Member States should consider holding seminars, symposia, training courses and lectures and undertaking studies on various aspects of international law. Students, professors and lawyers in the field of international law and personnel from Ministries of Foreign Affairs should be given scholarships in international law at various universities.

87. The programme of the Decade should focus on strengthening international peace and security as well as on establishing a progressive and just world order. The progressive development of international law must facilitate human progress and development. In that context, his delegation drew attention to the international economic environment for developing countries which, during the past decade, had been marked by negative resource flows, the proliferation of trade barriers, a crushing debt burden and high interest rates. That situation had resulted in a net flow of financial resources from developing countries to developed countries.

88. His delegation considered that underdevelopment and economic disparity between countries were among the main factors of social and political instability, with adverse consequences for international peace and security. In the context of the Decade, attention should be given to the solution of international economic problems, particularly of the developing countries, through such measures as lower interest rates, increased development assistance, curbs on protectionist policies and trade barriers, technology transfers to developing countries and stabilized commodity prices.

AGENDA ITEM 131: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/46/L.7, L.9 and L.10)

Draft resolution A/C.6/46/L.7

89. The CHAIRMAN drew attention to document A/C.6/46/L.10 containing the programme budget implications of draft resolution A/C.6/46/L.7.

90. Mr. HANAFI (Egypt), introducing the draft resolution on behalf of its sponsors, to which Poland had been added, said that it was a result of intensified efforts by all the delegations concerned. After drawing attention to a minor drafting change in paragraph 4 (c), he read out the fourth preambular paragraph, and said that the draft took into consideration the various proposals made to the General Assembly at its previous session with a view to enhancing the role of the Organization. After reading out paragraphs 2 and 3, he said that the proposal made by one delegation for the postponement of the next session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had been withdrawn. He then read out paragraphs 4 and 5 and expressed his delegation's hope that the draft resolution could be adopted without a vote.

91. Draft resolution A/C.6/46/L.7 was adopted with minor drafting changes.

Draft resolution A/C.6/46/L.9

92. Mr. BERG (Germany), introducing the draft resolution on behalf of its sponsors, to which Bulgaria, Hungary and Romania had been added, said that its main purpose was to approve the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security which had been completed by the Special Committee at the current session. After reading out the fifth preambular paragraph and paragraphs 3 and 4, he expressed his delegation's hope that the draft resolution could be adopted without a vote.

93. Mr. NTSAMA (Cameroon) said that, as a representative of a bilingual country whose official languages were French and English, he wished to point out that the translation of "fact-finding" in French as "activités d'établissement des faits" was not accurate. His delegation would prefer an expression which reflected the word "finding" and felt that a better rendering would be "investigations pour reconstituer des faits".

94. The CHAIRMAN suggested that the question should be referred to the Special Committee, and that, for the time being, the text should remain as it was.

95. Mr. ROSENSTOCK (United States of America) said that, while he could not comment on the choice of terms in French, he hoped it was clearly understood that the Committee was adopting the term which appeared in the text under consideration. The text to be adopted by the General Assembly in plenary meeting would reflect whichever term was subsequently decided on by the French-speaking delegations.

96. Draft resolution A/C.6/46/L.9 was adopted.

97. Mr. DONIGI (Papua New Guinea), explaining his delegation's position on the two draft resolutions just adopted, said that the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security merely reflected existing practice with

(Mr. Donigi, Papua New Guinea)

regard to the consent of receiving States as a precondition for the admission of United Nations fact-finding missions. Accordingly, unless States were prepared to grant consent, the prospects for achieving international peace and security or for curtailing the coordinated annihilation of minority peoples living within the territories of Member States would be diminished.

The meeting rose at 1.30 p.m.